



# **Renewable Energy (Electricity) Act 2000**

## **Act No. 174 of 2000 as amended**

This compilation was prepared on 2 April 2012  
taking into account amendments up to Act No. 132 of 2011

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act for the establishment and administration of a scheme to encourage additional electricity generation from renewable energy sources, and for related purposes

## Part 1—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Renewable Energy (Electricity) Act 2000*.

### 2 Commencement [see Note 1]

This Act commences 28 days after the day on which it receives the Royal Assent.

### 3 Object/outline

The objects of this Act are:

- (a) to encourage the additional generation of electricity from renewable sources; and
- (b) to reduce emissions of greenhouse gases in the electricity sector; and
- (c) to ensure that renewable energy sources are ecologically sustainable.

This is done through the issuing of certificates for the generation of electricity using eligible renewable energy sources and requiring certain purchasers (called *liable entities*) to surrender a specified number of certificates for the electricity that they acquire during a year.

Section 4

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Where a liable entity does not have enough certificates to surrender, the liable entity will have to pay renewable energy shortfall charge.

A partial exemption relating to one or more emissions-intensive trade-exposed activities may be taken into account in working out a liable entity's renewable energy certificate shortfall for a year. If it is, it will reduce the renewable energy shortfall charge otherwise payable.

#### 4 Years to which this Act applies

This Act applies to the year commencing on 1 January 2001 and to all subsequent years. However, no certificates can be created, and no liability arises, in respect of electricity generated on or after 1 January 2031.

#### 5 Definitions

- (1) In this Act, unless the contrary intention appears:

**1997 eligible renewable power baseline** has the meaning given by section 14.

**2008 WCMG limit** has the meaning given by section 14.

**accredited power station** means a power station accredited under Division 3 of Part 2.

**additional surrender notice** has the meaning given by section 45C.

**AEMO** has the same meaning as in the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia.

**Agriculture Department** means the Department responsible for administering the *Primary Industries Levies and Charges Collection Act 1991*.

**air source heat pump water heater** means a device that uses a vapour compression cycle incorporating a compressor, an evaporator that collects energy from the latent and sensible heat of



the atmosphere and a condenser that delivers heat either directly or indirectly to a hot water storage container.

***arrangement*** means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) any scheme, plan, proposal, action, course of action or course of conduct.

***assessment year's reduced acquisitions*** has the meaning given by section 38AA.

***Australia***, when used in a geographical sense, includes all the external Territories.

***authorised Commonwealth contractor*** means a person who:

- (a) provides, or proposes to provide, services to the Commonwealth under a contract; and
- (b) is authorised, in writing, by the Regulator for the purposes of this definition.

***carried forward shortfall*** has the meaning given by subsection 36(2).

***carried forward surplus*** has the meaning given by section 38.

***certificate*** means a renewable energy certificate.

***civil penalty order*** has the meaning given by subsection 154B(2).

***civil penalty provision*** means a provision declared by this Act to be a civil penalty provision.

***clearing house*** has the meaning given by section 30J.

***clearing house price*** has the meaning given by section 30LA.

***clearing house transfer list*** has the meaning given by subsection 30L(2).

***constitutional corporation*** means a corporation to which paragraph 51(xx) of the Constitution applies.

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**CSC** (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

**ecologically sustainable** means that an action is consistent with the following principles of ecologically sustainable development:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity, which is that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

**electricity generation return** has the meaning given by section 20.

**electronic signature** of a person means the person's unique identification in an electronic form that is approved by the Regulator under subsection (3).

**eligible energy sources** means:

- (a) eligible renewable energy sources; or
- (b) eligible WCMG.

**eligible renewable energy source** has the meaning given by section 17.

**eligible WCMG** has the meaning given by section 17A.

**emissions-intensive trade-exposed activity** means:

- (a) if regulations are made for the purposes of subsection 167(1) of the *Carbon Pollution Reduction Scheme Act 2009*—an activity that is taken to be an emissions-intensive

trade-exposed activity under the emissions-intensive trade-exposed assistance program; or

- (b) otherwise—an activity prescribed by regulations made for the purposes of this paragraph.

***emissions-intensive trade-exposed assistance program*** has the same meaning as in the *Carbon Pollution Reduction Scheme Act 2009*.

***energy acquisition statement*** has the meaning given by section 44.

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to do an act.

***executive officer*** of a body corporate means:

- (a) a director of the body corporate; or
- (b) the chief executive officer (however described) of the body corporate; or
- (c) the chief financial officer (however described) of the body corporate; or
- (d) the secretary of the body corporate.

***Federal Court*** means the Federal Court of Australia.

***first quarter*** has the meaning given by section 38AA.

***fourth quarter*** has the meaning given by section 38AA.

***general interest charge rate***, for a day, is the rate that is the general interest charge rate for that day for the purposes of the *Taxation Administration Act 1953*.

***government body*** means the Commonwealth, a State, a Territory or an authority of the Commonwealth or of a State or Territory.

***GST*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (including as provided by section 177-1 of that Act).

Note: Section 177-1 of the *A New Tax System (Goods and Services Tax) Act 1999* provides for the Commonwealth's notional liability to pay GST.

***GST inclusive clearing house price*** has the meaning given by section 30LA.

Section 5

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**GWh** means gigawatt hour.

**interest charge** means the charge payable under section 70.

**kW** means kilowatt.

**large-scale generation certificate** means a certificate created under Subdivision A of Division 4 of Part 2.

Note: These certificates relate to generation of electricity by accredited power stations.

**large-scale generation shortfall** has the meaning given by section 38.

**large-scale generation shortfall charge** has the meaning given by section 36.

**large-scale generation shortfall statement** has the meaning given by section 46.

**liable entity** has the meaning given by section 35.

**Minister for Finance** means the Minister administering the *Financial Management and Accountability Act 1997*.

**monitoring warrant** means a warrant issued under section 125.

**MW** means megawatt.

**MWh** means megawatt hour.

**National Electricity Rules** means the National Electricity Rules, as in force from time to time, made under the National Electricity Law set out in the Schedule to the *National Electricity (South Australia) Act 1996* of South Australia.

**nominated person**, for an accredited power station, means:

- (a) if no approvals have been given under section 30B in relation to the power station—the person who made the application for accreditation; or
- (b) if one or more approvals have been given under that section in relation to the power station—the last person so approved.

**objection decision** has the meaning given by section 58.

**occupier**, in relation to premises, includes a person present at the premises who is in apparent control of the premises.

**offence against this Act** includes:

- (a) an offence against the regulations; and
- (b) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 or 137.2 of the *Criminal Code* that relates to this Act or the regulations.

**official of the Regulator** has the same meaning as in the *Clean Energy Regulator Act 2011*.

**outstanding renewable energy shortfall charge related liability** of a person at a particular time means a renewable energy shortfall charge related liability of the person:

- (a) that has arisen at or before that time (whether or not it is due and payable at that time); and
- (b) an amount of which has not been paid before that time.

**partial exemption**, in relation to a liable entity, means a partial exemption for a year, calculated under section 38B, that is used in working out the entity's large-scale generation shortfall or small-scale technology shortfall for the year.

**partial exemption certificate** means a certificate issued under section 46B.

**penalty charge** means the charge payable under Part 9.

**premises** includes the following:

- (a) a structure, building or vehicle;
- (b) a place (whether enclosed or built on or not);
- (c) a part of a thing referred to in paragraph (a) or (b).

**previous year's reduced acquisitions** has the meaning given by section 38AA.

Note: See also sections 38AF, 38AG and 38AH.

**produce** includes permit access to.

**quarter** has the meaning given by section 38AA.

**quarterly shortfall** has the meaning given by section 38AE.

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***quarterly surplus*** has the meaning given by section 38AE.

***registered person*** means a person registered under Division 2 of Part 2.

***register of accredited power stations*** has the meaning given by section 138.

***register of applications for accredited power stations*** has the meaning given by section 141A.

***register of large-scale generation certificates*** has the meaning given by section 140.

***register of registered persons*** has the meaning given by section 136.

***register of small-scale technology certificates*** has the meaning given by section 141AA.

***registration number*** has the meaning given by section 12.

***Regulator*** means the Clean Energy Regulator.

***relevant acquisition*** has the meaning given by section 31.

***renewable energy certificate*** means a large-scale generation certificate or a small-scale technology certificate.

***renewable energy shortfall charge*** means large-scale generation shortfall charge or small-scale technology shortfall charge.

***renewable energy shortfall charge related liability*** means a pecuniary liability to the Commonwealth (including a liability the amount of which is not yet due and payable) being:

- (a) renewable energy shortfall charge; or
- (b) interest charge; or
- (c) penalty charge.

***renewable energy shortfall statement*** means a large-scale generation shortfall statement or a small-scale technology shortfall statement.

***renewable power percentage*** means the percentage prescribed under section 39.

***required GWh of renewable source electricity*** has the meaning given by section 40.

***required large-scale renewable energy*** has the meaning given by section 38.

***required surrender amount*** has the meaning given by section 38AE.

***second quarter*** has the meaning given by section 38AA.

***senior employee***, in relation to an authorised Commonwealth contractor, means an employee of the contractor, where the skills and responsibilities that are expected of the employee are equivalent to, or exceed, the skills and responsibilities expected of at least one of the senior officers of the Regulator.

***senior officer*** of the Regulator means a person who:

- (a) is a member of the staff of the Regulator; and
- (b) either:
  - (i) is an SES employee or acting SES employee; or
  - (ii) holds or performs the duties of an Executive Level 2 position or an equivalent position.

***small generation unit*** means a device that generates electricity that is specified by the regulations to be a small generation unit.

***small-scale technology certificate*** means a certificate created under Subdivision B or BA of Division 4 of Part 2 or under section 30P.

Note 1: Certificates created under Subdivision B or BA of Division 4 of Part 2 relate to the installation of solar water heaters and small generation units.

Note 2: Certificates created under section 30P are created by the Regulator for purchase through the clearing house.

***small-scale technology percentage*** has the meaning given by section 40A.

***small-scale technology shortfall*** has the meaning given by section 38AD.

***small-scale technology shortfall charge*** has the meaning given by section 38AB.

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***small-scale technology shortfall statement*** has the meaning given by section 46.

***solar water heater*** means a device that heats water using solar energy that satisfies any conditions set out in the regulations.

***staff of the Regulator*** has the same meaning as in the *Clean Energy Regulator Act 2011*.

***stakeholder***, in relation to an accredited power station, means:

- (a) a person who operates the power station (whether alone or together with one or more other persons); or
- (b) a person who owns all, or a part, of the power station (whether alone or together with one or more other persons).

***surrendered amount*** has the meaning given by section 38AE.

***surrender instrument*** has the meaning given by subsection 45(1).

***surrender period*** has the meaning given by section 38AA.

***taxable supply*** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (including as provided by section 177-1 of that Act).

Note: Section 177-1 of the *A New Tax System (Goods and Services Tax) Act 1999* provides for the Commonwealth's notional liability to pay GST.

***third quarter*** has the meaning given by section 38AA.

***warrant premises***, in relation to a monitoring warrant, means the premises to which the warrant relates.

- (2) For the purposes of this Act, electricity is taken to be a good that can be acquired.
- (3) The Regulator may, in writing, approve an electronic form for the purposes of the definition of ***electronic signature*** in subsection (1).

## 6 Act binds Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to a pecuniary penalty or to be prosecuted for an offence.



**7 Application to the external Territories**

This Act extends to every external Territory.

**7A Tax deductibility**

To avoid doubt, a charge or penalty under this Act is not tax deductible for the purposes of any law dealing with income tax.

**7B Constitutional basis**

To the extent that this Act applies in relation to a constitutional corporation, the operation of this Act is based on the following legislative powers:

- (a) the legislative power that the Commonwealth Parliament has under paragraph 51(xx) of the Constitution;
- (b) any other legislative power that the Commonwealth Parliament has under the Constitution.

**7C Immunity from State laws**

A constitutional corporation need not comply with any law of a State that substantially corresponds to this Act.

## **Part 2—Renewable energy certificates**

### **Division 1—Preliminary**

#### **8 Overview of Part** *[see Note 2]*

This Part provides for the creation, trading and extinguishing of renewable energy certificates.

The certificates are used to avoid or reduce the amount of renewable energy shortfall charge that liable entities who acquire electricity have to pay. The liable entities will generally acquire the certificates by purchasing them.

The certificates are created by people who generate power from accredited power stations using eligible energy sources where the amount generated exceeds the relevant 1997 eligible renewable power base line. The certificates are also created for approved installations of solar water heaters or small generation units.

A person needs to be registered under Division 2 before they can create a certificate.

Division 2A provides for provisional accreditation of power stations.

A power station needs to be accredited under Division 3 before a certificate can be issued in relation to power generated by it.

A certificate must be registered when it is created. Every transfer of the certificate must also be registered.

When a certificate has been surrendered by a liable party, it ceases to be valid.

See also Part 2A (clearing house for small-scale technology certificates), which:

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|--|
| <ul style="list-style-type: none"><li>(a) provides a clearing house facility for the transfer of small-scale technology certificates; and</li><li>(b) gives the Regulator a limited power to create or cancel small-scale technology certificates.</li></ul> |
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## **Division 2—Registration of persons**

### **9 Who can register**

- (1) Any person may be registered under this Act.
- (2) However, if a person's registration has been suspended under section 30 or 30A, the person cannot be registered during the period of the suspension.

### **10 Applying for registration**

- (1) A person may apply to the Regulator to be registered.
- (2) The application must:
  - (a) be made in a form and manner required by the Regulator; and
  - (b) contain any information required by the Regulator; and
  - (c) be accompanied by any documents required by the Regulator; and
  - (d) be accompanied by the fee (if any) prescribed by the regulations for the making of applications for registration.

### **11 Regulator to refuse or approve application**

- (1) If the Regulator receives an application that is properly made under section 10, the Regulator must:
  - (a) approve the application; or
  - (b) refuse the application.
- (2) The Regulator may refuse the application if the Regulator is satisfied that the applicant is not a fit and proper person.
- (2A) For the purposes of subsection (2), in determining whether the applicant is a fit and proper person, the Regulator:
  - (a) must have regard to the matters specified in regulations made for the purposes of this subsection; and
  - (b) may have regard to such other matters (if any) as the Regulator considers relevant.
- (3) The Regulator must refuse the application if the Regulator is satisfied that the applicant has previously been a registered person.

## **12 Regulator to allocate registration numbers**

If the Regulator approves an application, the Regulator must allocate the applicant a unique registration number and advise the applicant of the number.

## **Division 2A—Provisional accreditation of power stations**

### **12A Application for provisional accreditation of a power station**

- (1) A registered person may apply to the Regulator for provisional accreditation of the proposed components of an electricity generation system that the person considers would, if assembled, be a single power station.

#### *Form of application*

- (2) The application must:
- (a) be made in a form and manner required by the Regulator; and
  - (b) specify the proposed components; and
  - (c) list the eligible energy sources from which power is intended to be generated; and
  - (d) contain any other information required by the Regulator; and
  - (e) be accompanied by any documents required by the Regulator; and
  - (f) be accompanied by the fee (if any) prescribed by the regulations for the making of applications for provisional accreditation.

### **12B Regulator may give provisional accreditation**

- (1) If:
- (a) the Regulator receives an application that is properly made under section 12A (about an application for provisional accreditation of a power station); and
  - (b) the Regulator is satisfied that some or all of the proposed components of the system would, if assembled, be a power station for the purposes of this Act;
- the Regulator must, by written notice given to the applicant:
- (c) specify which of those proposed components (the ***provisional components***) would, if assembled, be a power station for the purposes of this Act; and
  - (d) specify that, if an application is properly made under section 13 in relation to the power station:

- (i) the Regulator will determine that the components specified in that application are taken to be a power station for the purposes of this Act if the Regulator is satisfied that they are not materially different from the provisional components; and
- (ii) the power station will be eligible for accreditation if subsection 14(2) is satisfied.

*Refusal*

- (2) If:
  - (a) the Regulator receives an application that is properly made under section 12A; and
  - (b) the Regulator is not satisfied that some or all of the proposed components of the system would, if assembled, be a power station for the purposes of this Act;the Regulator must, by written notice given to the applicant, refuse the application.

*Regulations*

- (3) Regulations made for the purposes of section 14, in relation to determining the components of a power station, apply in a corresponding way to this section.

**12C Time limit for deciding applications**

- (1) The Regulator must decide an application that is properly made under section 12A within:
  - (a) the period of 6 weeks beginning on the day the Regulator received the application; or
  - (b) if, before the end of that period, the Regulator and applicant agree to a longer period—that longer period.
- (2) If the Regulator has not decided the application within the period applicable under subsection (1), the Regulator is taken, at the end of that period, to have made a decision under section 12B refusing the application.

## **Division 3—Accreditation of eligible power stations**

### **13 Application for accreditation**

- (1) A registered person may apply to the Regulator for accreditation, as an accredited power station, of the components of an electricity generation system that the person considers are a single power station if the person:
  - (a) operates those components (whether alone or together with one or more other persons); or
  - (b) owns all, or a part, of those components (whether alone or together with one or more other persons).
- (2) The application must:
  - (a) be made in a form and manner required by the Regulator; and
  - (b) specify those components of the system that the applicant considers are a single power station; and
  - (baa) specify each other person (if any) who:
    - (i) operates those components (whether alone or together with one or more other persons); or
    - (ii) owns all, or a part, of those components (whether alone or together with one or more other persons); and
  - (ba) list:
    - (i) the eligible energy sources from which power is intended to be generated; and
    - (ii) the estimated average annual output of each source listed under subparagraph (i); and
  - (c) contain any other information required by the Regulator; and
  - (d) be accompanied by any documents required by the Regulator; and
  - (e) be accompanied by the fee (if any) prescribed by the regulations for the making of applications for accreditation; and
  - (f) be accompanied by a statement in writing from each other person (if any) specified under paragraph (baa) indicating that the other person agrees to the making of the application.
- (2A) An application that lists eligible WCMG as an eligible energy source from which power is intended to be generated cannot be



made after the day prescribed by the regulations for the purpose of this subsection.

- (3) The Regulator must enter details of the application on the register of applications for accredited power stations.

#### **14 Regulator to determine certain matters**

- (1) If the Regulator receives an application that is properly made under section 13, the Regulator must:
- (a) determine which components of the system are to be taken to be a power station for the purposes of this Act; and
  - (b) determine whether the power station is eligible for accreditation.

Note: A determination under paragraph (a) may be varied: see Division 10.

(1A) If:

- (a) the Regulator gave a person a notice under subsection 12B(1) in relation to the power station; and
- (b) the Regulator is satisfied that the components specified in the application under section 13 are not materially different from the components specified under subsection 12B(1);

the Regulator must determine, under paragraph (1)(a) of this section, that the components specified in the application under section 13 are taken to be a power station for the purposes of this Act.

- (2) A power station is eligible for accreditation if:
- (a) some or all of the power generated by the power station is generated from an eligible energy source; and
  - (b) the power station satisfies any prescribed requirements.
- (2A) However, a power station is not eligible for accreditation if the Regulator is satisfied that a previous determination under paragraph (1)(a) should be varied to include the components of the system specified in the application for accreditation.
- (3) If the Regulator determines that the power station is eligible for accreditation, the Regulator must also determine:
- (a) the **1997 eligible renewable power baseline** for the power station; and

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- (b) any energy sources used by the power station that are not eligible energy sources; and
- (c) if some or all of the power generated by the power station is generated from eligible WCMG—the **2008 WCMG limit** for the power station.

Note: The 1997 eligible renewable power baseline or the 2008 WCMG limit for a power station may be varied: see Division 12.

- (4) The Regulator must determine the matters specified in paragraphs (1)(a), (3)(a) and (3)(c) in accordance with guidelines prescribed in the regulations.
- (5) To avoid doubt:
  - (a) the regulations may provide that a power station includes components that are integral to the operation of the power station or to the generation of electricity by the power station; and
  - (b) the 1997 eligible renewable power baseline for a power station may be nil.

**15 Regulator to approve or refuse application**

If the Regulator determines that a power station is eligible for accreditation, the Regulator must approve the application. In any other case, the Regulator must refuse the application.

Note: The accreditation of an accredited power station may be suspended: see Division 11.

**15A Time limit for deciding applications**

*General rule*

- (1) Subject to subsection (3), the Regulator must decide an application that is properly made under section 13 within:
  - (a) the period of 6 weeks beginning on the day the Regulator received the application; or
  - (b) if, before the end of that period, the Regulator and applicant agree to a longer period—that longer period.
- (2) If the Regulator has not decided the application within the period applicable under subsection (1), the Regulator is taken, at the end

of that period, to have made a decision under section 15 refusing the application.

*Applications that list eligible WCMG as an eligible energy source*

- (3) If an application that is properly made under section 13 lists eligible WCMG as an eligible energy source from which power is intended to be generated, the Regulator must decide the application before the end of the period of 6 months starting on the day referred to in subsection 13(2A).
- (4) If the Regulator does not decide the application on or before that day, the Regulator is taken, on the following day, to have made a decision under section 15 refusing the application.

### **15B Nominated person for power station**

If the Regulator approves an application, the applicant becomes the nominated person for the accredited power station.

Note: The nominated person for the power station is able to create certificates for electricity generated by the power station: see section 18. The nominated person may change: see Division 9.

### **16 Regulator to allocate identification codes**

If the Regulator approves an application, the Regulator must allocate the power station a unique identification code and advise the applicant of the code.

### **17 What is an *eligible renewable energy source*?**

- (1) The following energy sources are *eligible renewable energy sources*:
  - (a) hydro;
  - (b) wave;
  - (c) tide;
  - (d) ocean;
  - (e) wind;
  - (f) solar;
  - (g) geothermal-aquifer;
  - (h) hot dry rock;
  - (i) energy crops;

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- (j) wood waste;
  - (k) agricultural waste;
  - (l) waste from processing of agricultural products;
  - (m) food waste;
  - (n) food processing waste;
  - (o) bagasse;
  - (p) black liquor;
  - (q) biomass-based components of municipal solid waste;
  - (r) landfill gas;
  - (s) sewage gas and biomass-based components of sewage;
  - (t) any other energy source prescribed by the regulations.
- (2) Despite subsection (1), the following energy sources are not eligible renewable energy sources:
- (a) fossil fuels;
  - (b) materials or waste products derived from fossil fuels.

*Regulations*

- (3) For the purposes of this Act, the regulations may provide that an energy source referred to in subsection (1) or (2) has the meaning prescribed by the regulations.
- (4) For the purposes of this Act, the regulations may make provision for and in relation to limiting the meaning of an energy source referred to in subsection (1).
- (5) For the purposes of this Act, the regulations may make provision for and in relation to extending the meaning of an energy source referred to in subsection (2).

**17A What is *eligible WCMG*?**

- (1) Waste coal mine gas is *eligible WCMG* if:
- (a) the waste coal mine gas is used in the generation of electricity by a power station in the period:
    - (i) starting on the day prescribed by the regulations for the purpose of this subparagraph; and
    - (ii) ending on 31 December 2020; and

- (b) either:
  - (i) the power station was generating electricity from waste coal mine gas at any time in May 2009; or
  - (ii) if subparagraph (i) does not apply—the power station had generated electricity from waste coal mine gas before May 2009, and, as at the end of May 2009, the owner or operator of the power station has a plan for the power station to resume generating electricity from waste coal mine gas before the end of September 2009.
- (2) For the purposes of this Act, the regulations may provide that waste coal mine gas has the meaning prescribed by the regulations.
- (3) For the purposes of this Act, the regulations may prescribe limitations (in addition to those in subsection (1)) that apply in order for waste coal mine gas to be *eligible WCMG*.
- (4) If the regulations do not prescribe a day for the purpose of subparagraph (1)(a)(i), no waste coal mine gas is eligible WCMG.

## **Division 4—Creation of renewable energy certificates**

### **Subdivision AA—Preliminary**

#### **17B Overview of Division**

This Division deals with the creation of certificates, known as renewable energy certificates.

There are 2 types of renewable energy certificates:

- (a) large-scale generation certificates, which are created in relation to the generation of electricity by accredited power stations (see Subdivision A); and
- (b) small-scale technology certificates, which are created in relation to the installation of solar water heaters and small generation units (see Subdivisions B and BA).

Small-scale technology certificates can also be created by the Regulator under Part 2A (clearing house for small-scale technology certificates).

Subdivision B requires people who create certificates under Subdivision B or BA to submit returns relating to the creation of the certificates.

Subdivision C contains offence and civil penalty provisions relating to the improper creation of certificates.

### **Subdivision A—Large-scale generation certificates for accredited power stations**

#### **17C Large-scale generation certificates**

Certificates created under this Subdivision are large-scale generation certificates.

## **18 Creating certificates for additional renewable electricity**

- (1) The nominated person for an accredited power station may create a certificate for each whole MWh of electricity generated by the power station during a year that is in excess of the power station's 1997 eligible renewable power baseline.
- (1A) A certificate must not be created in respect of a whole MWh of electricity generated partly in 1 year and partly in the following year.
- (2) If the amount of electricity generated by an accredited power station during a year that is in excess of the power station's 1997 eligible renewable power baseline is less than 1 MWh but greater than or equal to 0.5 MWh, the nominated person for the power station may create 1 certificate in respect of the electricity generated during the year.
- (3) The amount of electricity generated by an accredited power station is to be worked out in accordance with the regulations.
- (4) Electricity is to be excluded from all calculations under this section:
  - (a) to the extent that the electricity was generated using any energy sources that are not eligible energy sources; or
  - (b) to the extent that the electricity was generated during any period of suspension of the accreditation of the accredited power station under section 30D or 30E; or
  - (c) to the extent that the electricity was generated from eligible WCMG and is in excess of the accredited power station's 2008 WCMG limit.
- (5) The nominated person for an accredited power station must not create any certificates during any period of suspension of the person's registration under section 30 or 30A.

## **19 When certificates may be created**

A certificate may be created at any time after the generation of the final part of the electricity in relation to which it is created and before:

- (a) the end of the year after the year of generation; or
- (b) any later day allowed by the Regulator.

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Note: For offences and civil penalties related to the creation of certificates, see Subdivision C.

**20 Electricity generation return**

- (1) The nominated person for an accredited power station must give an electricity generation return for a year to the Regulator on or before:
  - (a) 14 February in the following year; or
  - (b) any later day allowed by the Regulator.
- (2) The return must include details of:
  - (a) the amount of electricity generated by the power station during the year; and
  - (b) the amount of that electricity that was generated using eligible energy sources; and
  - (c) the number of certificates created during the year in respect of the electricity generated by the power station during the year; and
  - (ca) the number of certificates created during the year in respect of any electricity generated by the power station during the previous year; and
  - (d) any other information specified by the regulations.

**20A Amending electricity generation returns**

- (1) The Regulator may amend an electricity generation return if the nominated person for the accredited power station concerned requests, in writing, an amendment within 12 months of the return being given.
- (2) The Regulator may also amend an electricity generation return on his or her own initiative if the amendment is made within 4 years of the return being given.
- (3) If the Regulator refuses to amend an electricity generation return upon a request by a nominated person for an accredited power station, the Regulator must notify the person accordingly.



## **Subdivision B—Small-scale technology certificates for solar water heaters**

### **20B Small-scale technology certificates**

Certificates created under this Subdivision are small-scale technology certificates.

### **21 When a certificate may be created**

- (1) If a solar water heater is installed on or after 1 April 2001, certificates may be created after the heater is installed.

Note: For offences and civil penalties related to the creation of certificates, see Subdivision C.

- (1A) The regulations:

- (a) may provide that certificates cannot be created in relation to a solar water heater unless particular conditions are satisfied in relation to the solar water heater or its installation; and
  - (b) without limiting paragraph (a), may:
    - (i) require information or documents to be given to the Regulator in relation to a solar water heater or its installation; and
    - (ii) provide that information or documents required to be given to the Regulator must be verified by statutory declaration.
- (2) The certificates may only be created within 12 months after the installation of the solar water heater.
- (3) The regulations may make provision in relation to the time at which a solar water heater is taken to have been installed.
- (4) If a solar water heater is an air source heat pump water heater, certificates may only be created for the installation of such an air source heat pump water heater if it has a volumetric capacity of not more than 425 litres.

## **22 How many certificates may be created**

- (1) The number of certificates (each representing 1 MWh) that may be created for a particular installation of a solar water heater is to be determined in accordance with the regulations.
- (2) Without limiting subsection (1), regulations made for the purpose of that subsection may:
  - (a) provide for the Regulator to determine the number of certificates that may be created for a particular installation of a solar water heater; and
  - (b) prescribe requirements to be complied with in relation to the making of such a determination, which may include a requirement that a determination is to be made in accordance with a legislative instrument made by the Regulator; and
  - (c) prescribe other matters relating to such a determination or legislative instrument.

## **23 Who may create a certificate**

- (1) The owner of the solar water heater at the time that it is installed is entitled to create the certificate or certificates that relate to the solar water heater.
- (2) However, the owner may, by written notice, assign the right to create the certificate or certificates to another person. If the owner does this, the owner is not entitled to create the certificate or certificates but the person to whom the right was assigned is entitled to create the certificate or certificates.
- (3) Despite subsections (1) and (2), a person who is not registered may not create a certificate that relates to the solar water heater.

## **23AA Register of solar water heaters**

The regulations may make provision for and in relation to the Regulator keeping a Register of solar water heaters.

## **Subdivision BA—Small-scale technology certificates for small generation units**

### **23AB Small-scale technology certificates**

Certificates created under this Subdivision are small-scale technology certificates.

### **23A When a certificate may be created**

- (1) If a small generation unit is installed on or after 1 April 2001, certificates may be created after the small generation unit is installed.

Note: For offences and civil penalties related to the creation of certificates, see Subdivision C.

- (1A) The regulations:

- (a) may provide that certificates cannot be created in relation to a small generation unit unless particular conditions are satisfied in relation to the small generation unit or its installation; and
- (b) without limiting paragraph (a), may:
  - (i) require information or documents to be given to the Regulator in relation to a small generation unit or its installation; and
  - (ii) provide that information or documents required to be given to the Regulator must be verified by statutory declaration.

- (1B) To avoid doubt, regulations under subsection (1A) may impose conditions to be complied with in relation to a small generation unit after its installation.

Note: For example, conditions may be imposed so that certificates cannot be created in relation to a small generation unit unless the unit remains functional.

- (2) The regulations may make provision in relation to the time at which a small generation unit is taken to have been installed.
- (3) The regulations may make provision in relation to:
- (a) the time when a right to create certificates in relation to a small generation unit arises; and

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- (b) the period within which certificates may be created in relation to a small generation unit.

**23AAA Regulations to establish scheme for inspection of new installations of small generation units**

- (1) The regulations must establish a scheme for the inspection of the installation of small generation units for which certificates have been created.
- (2) Without limiting subsection (1), regulations made under that subsection must provide, for small generation units installed after the commencement of this section:
  - (a) that each year a statistically significant selection of small generation units that were installed during that year must be inspected for conformance with Australian standards and any other standards or requirements relevant to the creation of certificates in relation to that small generation unit;
  - (b) that an inspection of a small generation unit is to be carried out by a person or organisation who:
    - (i) is independent of the person or organisation who designed and/or installed that small generation unit; and
    - (ii) does not have a conflict of interest in relation to that small generation unit or administration of the matters being inspected;
  - (c) for the transfer of information, about any failures to comply with standards or other requirements relevant to the creation of certificates in relation to small generation units, to State, Territory or Commonwealth bodies with responsibility for the enforcement and administration of those standards or requirements.
- (3) A report of an inspection carried out in accordance with regulations made under subsection (1) may set out:
  - (a) conclusions; or
  - (b) recommendations; or
  - (c) other material;that is or are relevant to the performance of the functions, or the exercise of the powers, conferred on the Regulator by section 26.

- (4) Subsection (3) does not limit the matters that may be set out in a report.

Note: Inspections carried out in accordance with regulations made under subsection (1):

- (a) may be relevant in determining whether a certificate is eligible for registration under section 26 (see subsection 26(3AA)); and
- (b) provide an indication of the effectiveness of the process for the registration of certificates.

## 23B How many certificates may be created

### *Number of certificates*

- (1) The number of certificates (subject to subsection (2), each representing 1 MWh) that may be created in relation to a small generation unit is to be determined in accordance with the regulations.

### *Regulations may multiply number of certificates*

- (2) The regulations may provide that, in the circumstances specified by the regulations, the number of certificates that may be created in relation to a small generation unit that is installed during a period specified in column 1 of an item in the following table is to be multiplied by a number that does not exceed the number specified in column 2 of the item.

Note: The regulations may make provision in relation to the time at which a small generation unit is taken to have been installed (see subsection 23A(2)).

<b>Multiplier for certificates for small generation units</b>		
<b>Item</b>	<b>Column 1 Period</b>	<b>Column 2 Number</b>
1	9 June 2009 to 30 June 2010	5
2	1 July 2010 to 30 June 2011	5
3	1 July 2011 to 30 June 2012	5
4	1 July 2012 to 30 June 2013	4
5	1 July 2013 to 30 June 2014	3
6	1 July 2014 to 30 June 2015	2

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- (3) However, subject to subsections (3A) and (3C), the regulations may provide for a number of certificates to be multiplied only if the certificates relate to not more than the first 3kW of the rated power output of the small generation unit.
- (3A) However, in the case of an off-grid small generation unit, the regulations must provide for a number of certificates to be multiplied only if the certificates relate to the first 20kW of the rated power output of the unit.
- (3B) In subsection (3A):
- off-grid small generation unit*** means:
- (a) a small generation unit at least 1 kilometre from the nearest main-grid line; or
  - (b) in the case of a small generation unit less than 1 kilometre from a main-grid line—the owner has provided written evidence from the local network service provider that the total cost of connecting the unit to the main-grid is more than \$30,000, making it uneconomic to connect the unit to the main-grid.
- (3C) The regulations must provide that the number of certificates that may be created under subsection (3A) as a result of a multiplier in subsection (2) for a period specified in column 1 of an item in the following table must not exceed the number specified in column 2 of the item.

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<b>Maximum number of certificates created under subsection (3A)</b>		
<b>Item</b>	<b>Column 1 Period</b>	<b>Column 2 Number</b>
1	1 July 2010 to 30 June 2011	250,000
2	1 July 2011 to 30 June 2012	250,000
3	1 July 2012 to 30 June 2013	200,000
4	1 July 2013 to 30 June 2014	150,000
5	1 July 2014 to 30 June 2015	100,000

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- (4) For the purposes of this Act, a certificate created in accordance with the regulations as mentioned in subsection (2) has a value of 1 MWh (even though the certificate does not actually represent 1 MWh).
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### **23C Who may create a certificate**

- (1) The owner of the small generation unit at the time that a right to create a certificate or certificates arises in relation to the small generation unit is entitled to create the certificate or certificates.
- (2) However, the owner may, by written notice and in accordance with the regulations, assign the right to create the certificate or certificates to another person. If the owner does this, the owner is not entitled to create the certificate or certificates but the person to whom the right was assigned is entitled to create the certificate or certificates.
- (3) Despite subsections (1) and (2), a person who is not registered may not create a certificate that relates to the small generation unit.
- (4) Regulations made for the purposes of subsection (2) may make provision:
  - (a) in relation to when the right may be assigned; and
  - (b) in relation to the kind of persons to whom the right may be assigned.
- (5) Subsection (4) does not limit the regulations that may be made for the purposes of subsection (2).

### **23D No other certificates to be created**

A person must not create certificates under Subdivision A in respect of electricity generated by a small generation unit, unless an election is made under section 23E in relation to that unit.

### **23E Election to not create certificates under this Subdivision**

- (1) The owner of a qualifying small generation unit at the time that it is installed may give the Regulator a notice in writing electing that this Subdivision does not apply to the creation of certificates that relate to the unit.

#### *Timing of election*

- (2) The owner must make the election within the period of 28 days beginning on the day the unit is installed and before any certificates are created under this Subdivision that relate to the unit.

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*Effect of election*

- (3) If an election is made, a person must not create certificates under this Subdivision that relate to the unit.

Note: A person may be able to create certificates under Subdivision A that relate to the unit.

*Election cannot be altered*

- (4) An election must not be varied or revoked.

*Definition*

- (5) In this section:

***qualifying small generation unit*** means a small generation unit of a kind prescribed by the regulations for the purposes of this section.

**Subdivision BB—Solar water heater and small generation unit return**

**23F Solar water heater and small generation unit return**

- (1) If the sum of the number of certificates created by a person during a year under Subdivisions B and BA exceeds 250, the person must give a return for the year to the Regulator on or before:
- (a) 14 February in the following year; or
  - (b) any later day allowed by the Regulator.
- (2) The return must include details of:
- (a) the number of certificates the person created under each of those Subdivisions during the year; and
  - (b) the number of certificates the person is entitled to create under Subdivision B because of rights assigned to the person under subsection 23(2) during the year; and
  - (c) the number of certificates the person is entitled to create under Subdivision BA because of rights assigned to the person under subsection 23C(2) during the year; and
  - (d) any other information specified by the regulations.



## **Subdivision C—Improper creation of certificates**

### **24 Improper creation of certificates—offences**

- (1) A person is guilty of an offence if:
- (a) the person creates a certificate; and
  - (b) the person is not entitled to create the certificate.

Penalty: 1 penalty unit.

- (2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Chapter 3 of the *Criminal Code* contains general principles relating to penalties.

Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) A person is guilty of an offence if:
- (a) the person creates a certificate; and
  - (b) the person is not entitled to create the certificate.

Penalty: 5 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Chapter 3 of the *Criminal Code* contains general principles relating to penalties.

- (4) To avoid doubt, a penalty may be imposed in respect of each certificate in respect of which a person is guilty of an offence.

Example: An individual who commits an offence under subsection (1) by creating 20 certificates that the individual was not entitled to create would be subject to a maximum penalty of 20 penalty units. If the offence were under subsection (3), the individual would be subject to a maximum penalty of 100 units.

- (5) In determining whether a person was not entitled to create a certificate, the fact that the certificate has been registered by the Regulator under section 26 is to be disregarded.

Note: This ensures that a person cannot raise as relevant evidence the fact that a certificate has been registered.

### **24A Improper creation of certificates—civil penalty**

- (1) A person must not create a certificate if the person is not entitled to create the certificate.

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*Ancillary contraventions*

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).

*Civil penalty provisions*

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

Note: Division 1 of Part 15A provides for pecuniary penalties for breaches of civil penalty provisions.

**24B False etc. information resulting in improper creation of certificates under Subdivision B or BA—civil penalty**

- (1) A person (the ***first person***) contravenes this subsection if:
- (a) the person provides information to another person (the ***second person***) in relation to, or in relation to the installation of, a solar water heater or a small generation unit; and
  - (b) the information:
    - (i) is false or misleading in a material particular; or
    - (ii) omits a matter or thing without which the information is misleading in a material particular; and
  - (c) the second person relies on the information to create certificates under Subdivision B or BA in relation to the solar water heater or small generation unit; and
  - (d) it could reasonably be expected that the second person would so rely on the information; and
  - (e) the second person's reliance on the information results in the second person creating certificates under that Subdivision, in relation to the solar water heater or small generation unit, that the second person is not entitled to create.

*Ancillary contraventions*

- (2) A person must not:
- (a) aid, abet, counsel or procure a contravention of subsection (1); or
  - (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
  - (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
  - (d) conspire with others to effect a contravention of subsection (1).

*Civil penalty provisions*

- (3) Subsections (1) and (2) are ***civil penalty provisions***.

Note: Division 1 of Part 15A provides for pecuniary penalties for breaches of civil penalty provisions.

## **Division 5—Form and registration of certificates**

### **25 Form and content of large-scale generation certificates**

- (1) Large-scale generation certificates are to be created in an electronic form approved in writing by the Regulator.
- (2) Each certificate is to contain:
  - (a) a unique identification code; and
  - (b) the electronic signature of the registered person who created the certificate; and
  - (c) the date on which the final part of the electricity in relation to which the certificate was created was generated; and
- (ca) details of the eligible energy source or sources of that electricity; and
- (d) the date on which the certificate was created.
- (3) A certificate's unique identification code is to consist of the following in the following order:
  - (a) the registered person's registration number;
  - (b) the power station's identification code;
  - (c) the year;
  - (d) a number in an unbroken sequence, that is used for all certificates issued in respect of electricity generated by the power station in that year, that starts at one and has increments of one.

### **25A Form and content of small-scale technology certificates**

- (1) Small-scale technology certificates are to be created in an electronic form approved in writing by the Regulator.
- (2) Each certificate is to contain:
  - (a) the registered person's registration number; and
  - (b) the year; and
  - (c) a number in an unbroken sequence that is used for all certificates created in respect of the solar water heater or small generation unit concerned in that year and that starts at one and has increments of one; and

- (d) the electronic signature of the registered person who created the certificate; and
  - (e) the date on which the solar water heater or small generation unit concerned was installed; and
  - (f) a statement that the certificate was created in relation to a solar water heater, or that it was created in relation to a small generation unit (as appropriate); and
  - (g) the date on which the certificate was created.
- (3) This section does not apply in relation to a small-scale technology certificate created by the Regulator under section 30P.

## **26 Certificates must be registered**

- (1) A certificate is not valid until it has been registered by the Regulator.
  - (2) The Regulator must be advised of the creation of a certificate by electronic transmission in the manner determined, in writing, by the Regulator.
  - (3) When the Regulator is notified that a certificate has been created, the Regulator must determine whether the certificate is eligible for registration.
- (3AA) In determining whether a certificate is eligible for registration, the Regulator must have regard to any relevant:
- (a) conclusions; or
  - (b) recommendations; or
  - (c) other material;
- set out in a report of an inspection carried out in accordance with regulations made under subsection 23AAA(1).
- Note: Subsection 23AAA(1) deals with the inspection of the installation of small generation units.
- (3AB) Subsection (3AA) does not limit the matters to which regard may be had.
- (3A) A certificate is not eligible for registration unless the Regulator has been paid the fee (if any) prescribed by the regulations for the registration of the certificate.

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- (3B) The amount of a fee prescribed under subsection (3A) must be reasonably related to the expenses incurred, or to be incurred, by the Commonwealth in connection with:
- (a) the performance of the Regulator's functions, or the exercise of the Regulator's powers, under this section; and
  - (b) the carrying out of inspections in accordance with regulations made under subsection 23AAA(1), to the extent to which the inspections are relevant to the performance of the functions, or the exercise of the powers, conferred on the Regulator by this section; and
  - (c) the preparation of reports of inspections carried out in accordance with regulations made under subsection 23AAA(1), to the extent to which such reports set out:
    - (i) conclusions; or
    - (ii) recommendations; or
    - (iii) other material;that is or are relevant to the performance of the functions, or the exercise of the powers, conferred on the Regulator by this section.
- (3C) A fee prescribed under subsection (3A) must not be such as to amount to taxation.
- (4) If the Regulator determines that a certificate is eligible for registration, the Regulator must create an entry for the certificate in the register of large-scale generation certificates or the register of small-scale technology certificates (as appropriate) and record the person who created the certificate as the owner of the certificate.
- (5) If the Regulator determines that a certificate is not eligible for registration, the Regulator must notify the person who created the certificate.
- (6) The Regulator may at any time (whether before or after the registration of a certificate) require the person who created the certificate to provide to the Regulator a written statement containing such information as the Regulator requires in connection with the creation of the certificate. The person who created the certificate must provide the statement within the period (not being a period of less than 14 days) specified by the Regulator.

- (7) This section does not apply in relation to a small-scale technology certificate created by the Regulator under section 30P.

## **Division 6—Transfer of certificates**

### **27 Certificates may be transferred**

Certificates that have been registered under section 26 or subsection 30P(3) may be transferred to any person.

Note: Subsection 30P(3) deals with registration of small-scale technology certificates created by the Regulator for purchase through the clearing house.

### **28 Regulator to be notified**

- (1) The Regulator must be notified of each transfer of a certificate.
- (2) The notification must be by electronic transmission in the manner determined, in writing, by the Regulator.
- (2A) The notification must be accompanied by the fee (if any) prescribed by the regulations for the purposes of this subsection.
- (3) When the Regulator is notified, the Regulator must alter the register of certificates to show the transferee as the owner of the certificate.
- (4) This section does not apply in relation to a transfer of a small-scale technology certificate by or to the Regulator under subsection 30N(2) or 30P(4).



## **Division 7—Retirement of certificates**

### **28A Registered owner may surrender certificate**

The registered owner of a certificate may surrender the certificate to the Regulator under this section.

Note 1: The name of the current registered owner of each certificate is in the register of large-scale generation certificates or the register of small-scale technology certificates (as appropriate).

Note 2: Certificates can also be surrendered:

- (a) under Subdivision A of Division 1 of Part 5; or
- (b) if they are large-scale generation certificates—under section 95.

### **29 Retirement of certificates**

- (1) Where a certificate is surrendered under section 28A, Subdivision A of Division 1 of Part 5, or section 95, the certificate ceases to be valid.
- (2) When a certificate ceases to be valid, the Regulator must alter the entry relating to the certificate in the register of certificates to show that the certificate is no longer valid.

## **Division 8—Suspension of registration**

### **30 Suspension of registration—conviction of offence**

- (1) If a registered person has been convicted of an offence under subsection 24(3), the Regulator may suspend the person's registration for such period (not exceeding 2 years) as the Regulator considers appropriate in all of the circumstances.
- (2) If a person whose registration has previously been suspended under subsection (1) is convicted of another offence under subsection 24(3), the Regulator may suspend the person's registration for such period (including permanently) as the Regulator considers appropriate in all of the circumstances.

### **30A Suspension of registration—other grounds**

*Regulator's belief that offence committed or civil penalty provision contravened*

- (1) The Regulator may, by written notice, suspend the registration of a registered person if the Regulator believes on reasonable grounds that the person has committed an offence against this Act or has contravened a civil penalty provision.
- (2) The registration is suspended for such period (not exceeding 12 months) as the Regulator considers appropriate in all of the circumstances. That period must be specified in the notice.

*Registration obtained improperly*

- (3) The Regulator may, by written notice, suspend the registration of a registered person if the registration was obtained improperly.
- (4) The registration is suspended for such period (including permanently) as the Regulator considers appropriate in all of the circumstances. That period must be specified in the notice.

*Prescribed ground*

- (5) The Regulator may, by written notice, suspend the registration of a registered person if the Regulator is satisfied that the registered person is not a fit and proper person.
- (5A) For the purposes of subsection (5), in determining whether the registered person is a fit and proper person, the Regulator:
  - (a) must have regard to the matters specified in regulations made for the purposes of this subsection; and
  - (b) may have regard to such other matters (if any) as the Regulator considers relevant.
- (6) The registration is suspended for such period (including permanently) as the Regulator considers appropriate in all of the circumstances. That period must be specified in the notice.

## **Division 9—Changing the nominated person for an accredited power station**

### **30B Changing the nominated person for an accredited power station**

- (1) A registered person who is a stakeholder in relation to an accredited power station may apply to the Regulator for approval to become the nominated person for the power station.

Note: The nominated person is able to create certificates in respect of electricity generated by the power station: see section 18.

- (2) The application must:
- (a) be made in a form and manner required by the Regulator; and
  - (b) contain any information required by the Regulator; and
  - (c) be accompanied by any documents required by the Regulator; and
  - (d) be accompanied by the fee (if any) prescribed by the regulations for the making of such applications; and
  - (e) be accompanied by a statement in writing from each other stakeholder (if any) in relation to the power station indicating that the other stakeholder agrees to the making of the application.
- (3) If the Regulator receives an application that is properly made, the Regulator must, by writing, approve the applicant as the nominated person for the power station.
- (4) Otherwise, the Regulator must refuse to so approve the applicant and must notify the applicant accordingly.

## **Division 10—Varying what constitutes a power station**

### **30C Varying what constitutes a power station**

- (1) The Regulator may, by writing, vary a determination under paragraph 14(1)(a). The Regulator may do so only in relation to an accredited power station.
- (2) The Regulator may do so on his or her own initiative or upon application by the nominated person for the accredited power station.
- (3) The application must:
  - (a) be made in a form and manner required by the Regulator; and
  - (b) contain any information required by the Regulator; and
  - (c) be accompanied by any documents required by the Regulator; and
  - (d) be accompanied by the fee (if any) prescribed by the regulations for the making of such applications; and
  - (e) be accompanied by a statement in writing from each other stakeholder (if any) in relation to the power station indicating that the other stakeholder agrees to the making of the application.
- (4) If the Regulator refuses the application, the Regulator must notify the applicant accordingly.

## Division 11—Suspending the accreditation of a power station

### 30D Suspending the accreditation of a power station— interconnected power stations

- (1) The Regulator may, by written notice, suspend the accreditation of an accredited power station if:
  - (a) the power station is part of a group of interconnected power stations; and
  - (b) one or more of the power stations (an *excess station*) in the group generates electricity during a year that is in excess of its 1997 eligible renewable power baseline for the year; and
  - (c) one or more of the power stations (a *shortfall station*) in the group generates nil electricity during the year or generates electricity during the year that is less than its 1997 eligible renewable power baseline for the year; and
  - (d) the Regulator is satisfied that more large-scale generation certificates are able to be created in respect of electricity generated during the year by any excess station than would be able to be created if any shortfall station had generated electricity during the year at least equal to its 1997 eligible renewable power baseline for the year.

#### *Period of suspension*

- (2) The accreditation is suspended for such period (including permanently) as the Regulator considers appropriate in all of the circumstances. That period must be specified in the notice.

Note: Any electricity generated by the power station while its accreditation is suspended is to be excluded from all calculations under section 18: see subsection 18(4).

#### *Group of interconnected power stations*

- (3) Two or more power stations form a *group of interconnected power stations* if:
  - (a) each power station is able to generate electricity using a particular supply (the *relevant supply*) of an eligible energy source; and

- (b) the amount of electricity generated by each power station during a year using that supply is able to be coordinated in order to allow more large-scale generation certificates to be created in respect of the total electricity generated by the power stations during the year using that supply than would otherwise be able to be created.

*Relevant matters*

- (4) In deciding whether or not to suspend the accreditation of an accredited power station under subsection (1), the Regulator must have regard to any information available to him or her that demonstrates that either or both of the outcomes referred to in paragraphs (1)(b) and (c) were not the result of a gaming arrangement.
- (4A) In considering whether the outcomes referred to in paragraphs (1)(b) and (c) were or were not the result of a gaming arrangement, the Regulator must have regard to any matter prescribed by the regulations for the purposes of this subsection.
- (5) The Regulator may have regard to such other matters as the Regulator thinks appropriate.

*Gaming arrangement*

- (6) A ***gaming arrangement*** is an arrangement to coordinate the amount of electricity generated by each power station in the group during the year using the relevant supply in order to allow more large-scale generation certificates to be created in respect of the total electricity generated by the power stations in the group during the year using that supply than would otherwise be able to be created.

### **30E Suspending the accreditation of a power station—other grounds**

*Failure to give an electricity generation return*

- (1) The Regulator may, by written notice, suspend the accreditation of an accredited power station if an electricity generation return for a year, in respect of the station, has not been given to the Regulator in accordance with section 20.

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- (2) The accreditation is suspended until the return is given to the Regulator in accordance with that section. The notice must include a statement to that effect.

*Contravention of Commonwealth, State or Territory law*

- (3) The Regulator may, by written notice, suspend the accreditation of an accredited power station if the Regulator believes on reasonable grounds that the power station is being operated in contravention of a law of the Commonwealth, a State or a Territory.
- (4) The accreditation is suspended until the Regulator believes on reasonable grounds that the power station is not being operated in contravention of that law. The notice must include a statement to that effect.

*Other circumstances*

- (5) The Regulator may, by written notice, suspend the accreditation of an accredited power station in any other circumstances prescribed by the regulations.
- (6) The accreditation is suspended for such period (including permanently) as the Regulator considers appropriate in all of the circumstances. That period must be specified in the notice.

Note: Any electricity generated by the power station while its accreditation is suspended under this section is to be excluded from all calculations under section 18: see subsection 18(4).



## **Division 12—Varying 1997 eligible renewable power baselines and 2008 WCMG limits**

### **30F Varying 1997 eligible renewable power baselines**

- (1) The Regulator may, by written determination, vary the 1997 eligible renewable power baseline for an accredited power station in the circumstances prescribed by the regulations.
- (2) The regulations may make provision for the 1997 eligible renewable power baseline for an accredited power station to be varied if an action or policy of the Commonwealth Government reduces the power station's ability to generate electricity for a sustained period.
- (3) Subsection (2) does not limit subsection (1).

#### *Increase in baseline*

- (4) If a determination increases the 1997 eligible renewable power baseline for an accredited power station, the determination has effect only for the years following the year in which the determination is made.

#### *Decrease in baseline*

- (5) If a determination decreases the 1997 eligible renewable power baseline for an accredited power station, the determination has effect for the year or years specified in the determination.

### **30G Varying 2008 WCMG limits**

- (1) The Regulator may, by written determination, vary the 2008 WCMG limit for an accredited power station.
- (2) The Regulator must make a determination in accordance with guidelines prescribed in the regulations.

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*Increase in limit*

- (3) If a determination increases the 2008 WCMG limit for an accredited power station, the determination has effect for the year or years specified in the determination.

*Decrease in limit*

- (4) If a determination decreases the 2008 WCMG limit for an accredited power station, the determination has effect only for the years following the year in which the determination is made.

## **Part 2A—Clearing house for small-scale technology certificates**

### **Division 1—Preliminary**

#### **30H Overview of Part**

This Part provides for the Regulator to establish and operate a clearing house for the transfer of small-scale technology certificates.

**Part 2A** Clearing house for small-scale technology certificates

**Division 2** Regulator to establish and operate clearing house

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## **Division 2—Regulator to establish and operate clearing house**

### **30J Regulator to establish and operate clearing house**

The Regulator is to establish and operate a facility (the *clearing house*) for the transfer of small-scale technology certificates in accordance with this Part.

## **Division 3—Entering certificates into the clearing house**

### **30K Application for certificate to be entered into the clearing house**

- (1) A person who:
  - (a) is the registered owner of a small-scale technology certificate; or
  - (b) has both:
    - (i) created a small-scale technology certificate; and
    - (ii) advised the Regulator of the creation of the certificate under subsection 26(2);may apply to the Regulator for the certificate to be entered into the clearing house.
- (2) The application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and
  - (c) be accompanied by any information required by the regulations; and
  - (d) be accompanied by any documents required by the regulations.

### **30L Regulator to enter certificate into the clearing house**

- (1) If:
  - (a) an application is made in accordance with section 30K in relation to a small-scale technology certificate; and
  - (b) the certificate is or becomes registered in the register of small-scale technology certificates;the Regulator must enter the certificate into the clearing house by including the certificate on the clearing house transfer list in accordance with the regulations.
- (2) The ***clearing house transfer list*** is a list, maintained by the Regulator in accordance with the regulations, of the certificates that are available for transfer through the clearing house. The list must be maintained so that:
  - (a) subject to paragraph (b), certificates are included on the list in the order in which applications relating to the certificates

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are received (with the certificates to which the most recent applications relate at the bottom of the list); and

- (b) if a certificate to which an application relates does not become registered until after the application was received, paragraph (a) applies as if the application was received when the certificate was registered; and
- (c) a certificate must be removed from the list if:
  - (i) the certificate is withdrawn from the clearing house; or
  - (ii) the certificate is transferred under section 30N; or
  - (iii) the certificate is cancelled under section 30P.

Note: Regulations under section 30U may allow the Regulator to remove certificates from the list in other circumstances.

- (3) If the Regulator includes a certificate on the clearing house transfer list, the Regulator must:
  - (a) alter the register of small-scale technology certificates to show that the certificate is in the clearing house; and
  - (b) take such other steps as are prescribed by the regulations.
- (4) While a certificate is on the clearing house transfer list, the certificate may still be transferred by its registered owner to another person otherwise than under this Part. Despite that transfer, the certificate will remain on the clearing house transfer list, and may be dealt with under this Part, unless the new registered owner withdraws the certificate from the clearing house.

Note: See also sections 27 (certificates may be transferred) and 28 (Regulator to be notified of transfer).

- (5) The clearing house transfer list is not a legislative instrument.

## **Division 4—Purchase of certificates through the clearing house**

### **30LA Clearing house price etc.**

- (1) The *clearing house price* is:
  - (a) subject to paragraph (b)—\$40; or
  - (b) if the Minister, by legislative instrument, specifies a lesser amount as being the clearing house price for the purpose of this subsection—the amount so specified.
- (2) The *GST inclusive clearing house price* is the amount equal to 110% of the clearing house price.
- (3) Before making an instrument under paragraph (1)(b), the Minister:
  - (a) must take into consideration:
    - (i) whether the total value, in MWh, of small-scale technology certificates created in 2015 exceeded or is expected to exceed 6,000,000; and
    - (ii) any changes to the costs of small generation units and solar water heaters; and
    - (iii) the extent to which owners of small generation units and solar water heaters contribute to the costs of small generation units and solar water heaters; and
    - (iv) the impact of the clearing house price, and the number of small generation units and solar water heaters installed, on the electricity market, including on electricity prices; and
  - (b) may take into consideration any other matters that the Minister considers relevant.
- (4) If the Minister is considering a matter mentioned in paragraph (3)(a), the Minister must obtain, and take into consideration, independent advice about that matter.
- (5) An instrument made under paragraph (1)(b) must not be expressed to commence earlier than the first 1 April following the making of the instrument.
- (6) If:

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- (a) an instrument is made under paragraph (1)(b); and
- (b) on a particular day (the **tabling day**), a copy of the instrument is tabled before a House of the Parliament under section 38 of the *Legislative Instruments Act 2003*;

then, on or as soon as practicable after the tabling day, the Minister must cause to be tabled before that House a written statement setting out the Minister's reasons for making the instrument.

**30M Application for purchase of certificate through the clearing house**

- (1) Subject to subsection (2), a person may apply to the Regulator to purchase a small-scale technology certificate.
- (2) The regulations may provide that certain persons are not entitled (either generally or in particular circumstances) to make an application.
- (3) An application must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and
  - (c) be accompanied by the GST inclusive clearing house price; and
  - (d) be accompanied by any fee required by the regulations.

**30N If there is a certificate on the clearing house transfer list—  
Regulator to transfer certificate**

*Scope*

- (1) This section applies if:
  - (a) a person (the **purchaser**) has made an application in accordance with section 30M to purchase a small-scale technology certificate; and
  - (b) there is a small-scale technology certificate on the clearing house transfer list.

*Regulator to transfer certificate at top of clearing house transfer list*

- (2) The Regulator must transfer the certificate that is at the top of the clearing house transfer list to the purchaser on behalf of the person



(the *seller*) who, immediately before the transfer, was the registered owner of that certificate.

- (3) If the Regulator transfers a certificate under subsection (2), the Regulator must, as soon as practicable:
  - (a) give the purchaser notice in writing of the transfer; and
  - (b) pay the seller the amount specified in subsection (4); and
  - (c) alter the register of small-scale technology certificates to show the purchaser as the owner of the certificate.
- (4) For the purposes of paragraph (3)(b), the amount is:
  - (a) if the transfer of the certificate is a taxable supply by the seller to the purchaser—the GST inclusive clearing house price; or
  - (b) if the transfer of the certificate is not a taxable supply by the seller to the purchaser—the clearing house price.
- (5) Ownership of the certificate transfers to the purchaser when the register of small-scale technology certificates is altered in accordance with paragraph (3)(c).

**30P If there is no certificate on the clearing house transfer list—  
Regulator to create certificate**

*Scope*

- (1) This section applies if:
  - (a) a person (the *purchaser*) has made an application in accordance with section 30M to purchase a small-scale technology certificate; and
  - (b) there is no small-scale technology certificate on the clearing house transfer list.

*Regulator to create certificate*

- (2) The Regulator must create a small-scale technology certificate for the purchaser.
- (3) If the Regulator creates a certificate under subsection (2):
  - (a) the certificate is valid; and
  - (b) the Regulator must, as soon as practicable:

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- (i) give the purchaser notice in writing of the creation of the certificate; and
- (ii) create an entry for the certificate in the register of small-scale technology certificates and record the purchaser as the owner of the certificate.

*Cancellation of next certificate included on clearing house transfer list*

- (4) If a certificate is created under subsection (2), the following provisions apply:
  - (a) the next small-scale technology certificate (the ***transferred certificate***) that is included on the clearing house transfer list is, immediately after being so included, taken to be transferred to the Regulator by the person (the ***seller***) who was its registered owner immediately before it was included on the list;
  - (b) the Regulator must, as soon as practicable:
    - (i) cancel the transferred certificate; and
    - (ii) pay the seller the amount specified in subsection (5); and
    - (iii) alter the entry relating to the transferred certificate in the register of small-scale technology certificates to show that the transferred certificate is no longer valid.
- (5) For the purposes of subparagraph (4)(b)(ii), the amount is:
  - (a) if the transfer to the Regulator of the transferred certificate constitutes a taxable supply by the seller to the Regulator—the GST inclusive clearing house price; or
  - (b) if the transfer to the Regulator of the transferred certificate does not constitute a taxable supply by the seller to the Regulator—the clearing house price.

**30Q Form and content of certificates created by the Regulator**

- (1) Certificates created by the Regulator under subsection 30P(2) are to be created in an electronic form approved in writing by the Regulator.
- (2) Each certificate is to contain:
  - (a) the year; and

- (b) a statement to the effect that the certificate was created by the Regulator under section 30P; and
- (c) a number in an unbroken sequence that is used for all certificates created by the Regulator in that year and that starts at one and has increments of one; and
- (d) the date on which the certificate was created.

## **Division 5—Renewable Energy Special Account**

### **30R Renewable Energy Special Account**

- (1) The Renewable Energy Special Account is established by this section.
- (2) The Renewable Energy Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

### **30S Credits to the Renewable Energy Special Account**

There must be credited to the Renewable Energy Special Account amounts equal to amounts received by the Regulator under paragraph 30M(3)(c) in relation to the purchase of certificates.

Note: An Appropriation Act may contain a provision to the effect that, if any of the purposes of a Special Account is a purpose that is covered by an item in the Appropriation Act (whether or not the item expressly refers to the Special Account), then amounts may be debited against the appropriation for that item and credited to that Special Account.

### **30T Purposes of the Renewable Energy Special Account**

The purposes of the Renewable Energy Special Account are as follows:

- (a) paying amounts under paragraph 30N(3)(b) in relation to the transfer of certificates;
- (b) paying amounts under subparagraph 30P(4)(b)(ii) in relation to the transfer of certificates;
- (c) refunding amounts under regulations made for the purpose of paragraph 30U(2)(i);
- (d) paying amounts of GST for which the Regulator is liable because of the creation of certificates for purchasers under section 30P.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debts from Special Accounts).

## **Division 6—Other matters**

### **30U Regulations about the operation of the clearing house**

- (1) The regulations may prescribe the policies, procedures and rules that apply in relation to the establishment and operation of the clearing house.
- (2) In particular, the regulations may deal with any or all of the following matters:
  - (a) the time when applications may be made;
  - (b) the time within which, and the manner by which, applications must be dealt with;
  - (c) the withdrawal of certificates from the clearing house;
  - (d) the circumstances in which the Regulator may remove a certificate from the clearing house transfer list other than under paragraph 30L(2)(c);
  - (e) the timing and methods of payment of amounts;
  - (f) the publication of information about the clearing house, including publication of the clearing house transfer list;
  - (g) the keeping of records by the Regulator in relation to the operation of the clearing house;
  - (h) the fees that are payable in relation to matters connected with the clearing house (including matters connected with the Regulator's powers and functions in relation to the clearing house and the clearing house transfer list);
  - (i) the payment of refunds in the following circumstances:
    - (i) a small-scale technology certificate is transferred to a purchaser under section 30N but the transfer is not a taxable supply by the seller to the purchaser;
    - (ii) a small-scale technology certificate is created for a purchaser under section 30P but the creation of the certificate is not a taxable supply by the Regulator to the purchaser.

## Part 3—Acquisition of electricity

### 31 What are *relevant acquisitions*?

- (1) There are 2 types of *relevant acquisitions* of electricity. These are:
  - (a) a wholesale acquisition (see section 32); and
  - (b) a notional wholesale acquisition (see section 33).
- (2) An acquisition is not a relevant acquisition if:
  - (a) the electricity was delivered on a grid that has a capacity that is less than 100 MW and that is not, directly or indirectly, connected to a grid that has a capacity of 100 MW or more;  
or
  - (b) the end user of the electricity generated the electricity and either of the following conditions are satisfied:
    - (i) the point at which the electricity is generated is less than 1 kilometre from the point at which the electricity is used;
    - (ii) the electricity is transmitted or distributed between the point of generation and the point of use and the line on which the electricity is transmitted or distributed is used solely for the transmission or distribution of electricity between those 2 points; or
  - (c) the electricity is later acquired by AEMO or a person or body prescribed by the regulations.
- (3) The amount of electricity acquired under a relevant acquisition and the capacity of a grid are to be determined in accordance with the regulations.
- (4) A person who owns, operates or controls a grid must give the Regulator a statement within 28 days of either of the following happening:
  - (a) the capacity of the grid increases from less than 100 MW to 100 MW or more;
  - (b) the grid becomes connected, directly or indirectly, to a grid that has a capacity of 100 MW or more.The statement must include any information specified in the regulations.

### 32 Wholesale acquisitions

- (1) A **wholesale acquisition** is an acquisition of electricity from:
  - (a) AEMO or a person or body prescribed by the regulations; or
  - (b) a person who did not acquire it from another person.
- (2) To avoid doubt, subsection (1) does not apply where an end user acquires electricity from the person who generated the electricity and subsection 33(2) applies to create a notional wholesale acquisition in connection with that acquisition.
- (3) If there is a wholesale acquisition of electricity under this section, then no other acquisition in relation to that electricity is a relevant acquisition (regardless of when the other acquisition occurs).

### 33 Notional wholesale acquisitions

- (1) There are 2 situations in which a **notional wholesale acquisition** of electricity takes place.
- (2) The first situation is where the end user of the electricity acquires the electricity from the person who generated the electricity and the end user is not registered under the National Electricity Rules. In this situation, the person who generated the electricity is taken to be 2 persons (the **notional generator** and the **notional wholesaler**), and this Act applies as if the notional wholesaler acquired the electricity from the notional generator at the time that the end user acquired the electricity. That acquisition is a **notional wholesale acquisition**.
- (3) The second situation is where the end user of the electricity generated the electricity and neither of the following conditions are satisfied:
  - (a) the point at which the electricity is generated is less than 1 kilometre from the point at which the electricity is used;
  - (b) the electricity is transmitted or distributed between the point of generation and the point of use and the line on which the electricity is transmitted or distributed is used solely for the transmission or distribution of electricity between those 2 points.

In this situation, the person who generated the electricity is taken to be 2 persons (the **notional generator** and the **notional wholesaler**), and this Act applies as if the notional wholesaler acquired the

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electricity from the notional generator at the time that the electricity is used. That acquisition is a *notional wholesale acquisition*.

**34 Special provision relating to transactions involving AEMO or a person or body prescribed by the regulations**

Despite section 31, no acquisition of electricity by AEMO or a person or body prescribed by the regulations is a relevant acquisition.



## **Part 4—Renewable energy shortfall charge**

### **Division 1AA—Preliminary**

#### **34A Overview of Part**

This Part deals with liability to renewable energy shortfall charge.

Subdivision A of Division 1 defines who is a liable entity.

There are 2 types of renewable energy shortfall charge:

- (a) large-scale generation shortfall charge (see Subdivision B of Division 1), which is calculated by reference to a liable entity's relevant acquisitions of electricity, its partial exemptions, the number of large-scale generation certificates it surrenders and the renewable energy power percentage; and
- (b) small-scale technology shortfall charge (see Subdivision C of Division 1), which is calculated by reference to a liable entity's relevant acquisitions of electricity, its partial exemptions, the number of small-scale technology certificates it surrenders and the small-scale technology percentage.

Division 1A deals with the determination of the amount (if any) of a liable entity's partial exemption from charge.

Division 2 deals with the renewable power percentage for large-scale generation shortfall charge.

Division 2A deals with the small-scale technology percentage for small-scale technology charge.

Division 3 deals with other matters related to renewable energy shortfall charge.

## Division 1—Liability to charge

### Subdivision A—Liable entities

#### 35 Liable entities

A person who, during a year, makes a relevant acquisition of electricity is called a *liable entity*.

Note: *Relevant acquisition* is defined in section 31.

### Subdivision B—Large-scale generation shortfall charge

#### 36 Large-scale generation shortfall charge payable by liable entity

- (1) Subject to subsection (2), if a liable entity has a large-scale generation shortfall for a year, *large-scale generation shortfall charge* is payable in respect of the shortfall.
- (2) No large-scale generation shortfall charge is payable by a liable entity for a year if its large-scale generation shortfall for the year is less than 10% of the liable entity's required large-scale renewable energy for the year. However, the large-scale generation shortfall becomes a *carried forward shortfall* for the year.
- (3) Large-scale generation shortfall charge imposed in respect of a liable entity's large-scale generation shortfall for a year is payable by the liable entity.

Note: Large-scale generation shortfall charge is imposed by the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*.

#### 37 Amount of charge

The amount of large-scale generation shortfall charge payable by a liable entity is worked out using the formula:

Large-scale generation shortfall × Rate of charge

where:

*rate of charge* is the rate of charge as specified in section 6 of the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*.

### 38 Determination of large-scale generation shortfall

The following method statement shows how to work out a liable entity's *large-scale generation shortfall* for a year:

#### *Method statement*

- Step 1. Work out the total amount, in MWh, of electricity acquired by the liable entity during the year under relevant acquisitions.
- Step 2. Subtract from the total electricity acquired the amount of the liable entity's partial exemption for the year.
- Step 3. Multiply the result of step 2 by the renewable power percentage for the year and round the result to the nearest MWh (rounding 0.5 upwards). Add to the result any carried forward shortfall from the previous year or subtract any carried forward surplus for the previous year. The result is the liable entity's *required large-scale renewable energy* for the year.
- Step 4. Subtract the total value, in MWh, of large-scale generation certificates surrendered for that year, under Subdivision A of Division 1 of Part 5, by the liable entity from the required large-scale renewable energy for the year.
- Result: If the result is greater than zero, the liable entity has a large-scale generation shortfall for the year equal to the result.
- If the result is zero, the liable entity does not have a large-scale generation shortfall for the year.
- If the result is less than zero, the liable entity has a *carried forward surplus* for the year equal to the result (expressed as a positive).

### Subdivision C—Small-scale technology shortfall charge

#### 38AA Interpretive provisions relating to liability for small-scale technology shortfall charge etc.

- (1) This section defines expressions that are used in provisions that deal with the determination of a liable entity's liability to small-scale technology shortfall charge for a year (the **assessment year**), and related matters.

*Assessment year's reduced acquisitions*

- (2) The **assessment year's reduced acquisitions** is the amount worked out by subtracting the amount of the liable entity's partial exemption (if any) for the assessment year from the total amount, in MWh, of electricity acquired during the assessment year by the liable entity under relevant acquisitions.

*Previous year's reduced acquisitions*

- (3) The **previous year's reduced acquisitions** is the amount worked out by subtracting the amount of the liable entity's partial exemption (if any) for the previous year from the amount, in MWh, of electricity acquired by the liable entity during the previous year under relevant acquisitions.
- (4) For the purpose of subsection (3):
- (a) the amount, in MWh, of electricity acquired during the previous year by the liable entity under relevant acquisitions is taken to be the amount stated as having been so acquired in the liable entity's energy acquisition statement for the previous year (taking account of any amendments to that statement that were made before 1 April in the assessment year); and
  - (b) the amount of the liable entity's partial exemption for the previous year is taken to be the total amount of partial exemption claimed in the liable entity's energy acquisition statement for the previous year (taking account of any amendments to that statement that were made before 1 April in the assessment year); and
  - (c) if, for any reason, the liable entity has not lodged an energy acquisition statement for the previous year before 1 April in

the assessment year, the liable entity is taken not to have any previous year's reduced acquisitions.

Note: If paragraph (4)(c) applies, the liable entity may make an application under section 38AG to have an amount apply as if it were the previous year's reduced acquisitions. If the entity does not do so, the default rule in section 38AH will apply.

*The quarters of a year*

- (5) Each year consists of **quarters** as follows:
- (a) January, February and March in the year (the **first quarter**);
  - (b) April, May and June in the year (the **second quarter**);
  - (c) July, August and September in the year (the **third quarter**);
  - (d) October, November and December in the year (the **fourth quarter**).

*The surrender period for a quarter*

- (6) The **surrender period** for a quarter of a year is as follows (inclusive of the specified dates):
- (a) for the first quarter—the period from 15 February to 28 April in the year;
  - (b) for the second quarter—the period from 29 April to 28 July in the year;
  - (c) for the third quarter—the period from 29 July to 28 October in the year;
  - (d) for the fourth quarter—the period from 29 October in the year to the time by which the liable entity is required to lodge an energy acquisition statement for the year.
- Note: The period described in paragraph (6)(d) will end on 14 February in the next year, unless the Regulator allows a later day under paragraph 44(1)(b).
- (7) Section 36 of the *Acts Interpretation Act 1901* does not affect the time when the surrender period for the first, second or third quarter of a year ends.

**38AB Small-scale technology shortfall charge payable by liable entity**

- (1) If a liable entity has a small-scale technology shortfall for a year, *small-scale technology shortfall charge* is payable in respect of the shortfall.
- (2) Small-scale technology shortfall charge imposed in respect of a liable entity's small-scale technology shortfall for a year is payable by the liable entity.

Note: Small-scale technology shortfall charge is imposed by the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*.

**38AC Amount of charge**

The amount of small-scale technology shortfall charge payable by a liable entity is worked out using the formula:

Small-scale technology shortfall × Rate of charge

where:

*rate of charge* is the rate of charge as specified in section 6 of the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*.

**38AD Determination of small-scale technology shortfall**

- (1) A liable entity's *small-scale technology shortfall* for a year is to be worked out by adding together the quarterly shortfalls (if any) calculated in relation to the entity for the quarters of the year under section 38AE.
- (2) If the result is a positive amount, the liable entity has a small-scale technology shortfall for the year equal to the result.
- (3) If the result is zero, the liable entity does not have a small-scale technology shortfall for the year.

### 38AE Quarterly shortfalls for the quarters of a year

#### *First quarter of year*

- (1) The following method statement shows how to work out a liable entity's quarterly shortfall for the first quarter of a year (the *assessment year*).

#### *Method statement*

Step 1. Work out 35% of the previous year's reduced acquisitions. Multiply this by the small-scale technology percentage for the assessment year and round the result to the nearest MWh (rounding 0.5 upwards). The result is the ***required surrender amount***.

Step 2. Add together:

- (a) the total value, in MWh, of small-scale technology certificates surrendered, under Subdivision A of Division 1 of Part 5, by the liable entity during the surrender period for the first quarter; and
- (b) the amount of any quarterly surplus that the liable entity has for the fourth quarter of the previous year.

The result is the ***surrendered amount***.

Step 3. Subtract the surrendered amount from the required surrender amount.

Result: If the result is greater than zero, the liable entity has a ***quarterly shortfall*** for the first quarter of the assessment year equal to the result.

If the result is zero, the liable entity does not have a quarterly shortfall for the first quarter of the assessment year.

If the result is less than zero, the liable entity has a ***quarterly surplus*** for the first quarter of the assessment year equal to the result (expressed as a positive).

*Second quarter of the assessment year*

- (2) The following method statement shows how to work out a liable entity's quarterly shortfall for the second quarter of the assessment year.

*Method statement*

Step 1. Work out 25% of the previous year's reduced acquisitions. Multiply this by the small-scale technology percentage for the assessment year and round the result to the nearest MWh (rounding 0.5 upwards). The result is the ***required surrender amount***.

Step 2. Add together:

- (a) the total value, in MWh, of small-scale technology certificates surrendered, under Subdivision A of Division 1 of Part 5, by the liable entity during the surrender period for the second quarter; and
- (b) the amount of any quarterly surplus that the liable entity has for the first quarter of the assessment year.

The result is the ***surrendered amount***.

Step 3. Subtract the surrendered amount from the required surrender amount.

Result: If the result is greater than zero, the liable entity has a ***quarterly shortfall*** for the second quarter of the assessment year equal to the result.

If the result is zero, the liable entity does not have a quarterly shortfall for the second quarter of the assessment year.



If the result is less than zero, the liable entity has a **quarterly surplus** for the second quarter of the assessment year equal to the result (expressed as a positive).

*Third quarter of the assessment year*

- (3) The following method statement shows how to work out a liable entity's quarterly shortfall for the third quarter of the assessment year.

*Method statement*

Step 1. Work out 25% of the previous year's reduced acquisitions. Multiply this by the small-scale technology percentage for the assessment year and round the result to the nearest MWh (rounding 0.5 upwards). The result is the **required surrender amount**.

Step 2. Add together:

- (a) the total value, in MWh, of small-scale technology certificates surrendered, under Subdivision A of Division 1 of Part 5, by the liable entity during the surrender period for the third quarter; and
- (b) the amount of any quarterly surplus that the liable entity has for the second quarter of the assessment year.

The result is the **surrendered amount**.

Step 3. Subtract the surrendered amount from the required surrender amount.

Result: If the result is greater than zero, the liable entity has a **quarterly shortfall** for the third quarter of the assessment year equal to the result.

If the result is zero, the liable entity does not have a quarterly shortfall for the third quarter of the assessment year.

If the result is less than zero, the liable entity has a **quarterly surplus** for the third quarter of the assessment year equal to the result (expressed as a positive).

*Fourth quarter of the assessment year*

- (4) The following method statement shows how to work out a liable entity's quarterly shortfall for the fourth quarter of the assessment year.

*Method statement*

Step 1. Work out the assessment year's reduced acquisitions. Multiply this by the small-scale technology percentage for the assessment year and round the result to the nearest MWh (rounding 0.5 upwards).

Step 2. Subtract from the amount worked out under step 1 the total of the required surrender amounts for the first, second and third quarters of the assessment year. The result (which may be less than zero) is the **required surrender amount**.

Step 3. Add together:

- (a) the total value, in MWh, of small-scale technology certificates surrendered, under Subdivision A of Division 1 of Part 5, by the liable entity during the surrender period for the fourth quarter; and
- (b) the amount of any quarterly surplus that the liable entity has for the third quarter of the assessment year.

The result is the **surrendered amount**.

Step 4. If the required surrender amount is zero or greater, subtract the surrendered amount from the required surrender amount.

Result: If the result is greater than zero, the liable entity has a ***quarterly shortfall*** for the fourth quarter of the assessment year equal to the result.

If the result is zero, the liable entity does not have a quarterly shortfall for the fourth quarter of the assessment year.

If the result is less than zero, the liable entity has a ***quarterly surplus*** for the fourth quarter of the assessment year equal to the result (expressed as a positive amount).

Step 5. If the required surrender amount is less than zero, add together that amount (expressed as a positive) to the surrendered amount.

Result: The liable entity has a ***quarterly surplus*** for the fourth quarter of the assessment year equal to the result.

**38AF Energy acquisition statement lodged for previous year:  
application to have amount apply instead of previous  
year's reduced acquisitions**

- (1) If the liable entity lodged an energy acquisition statement for the previous year before 1 April in the assessment year, the liable entity may apply to the Regulator to have an amount (the ***proposed amount***) apply instead of the previous year's reduced acquisitions for the purpose of applying section 38AE to the assessment year.
- (2) The application must:
  - (a) specify the proposed amount; and
  - (b) be made before 1 October in the assessment year.

Note: For other provisions relating to the making of applications, see section 38AI.

- (3) The Regulator must consider the application and must, in writing:

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- (a) determine that the proposed amount, or a different amount, is to apply instead of the amount of the previous year's reduced acquisitions; or
  - (b) refuse to make such a determination.
- (4) A determination under subsection (3) is not a legislative instrument.
- (5) In relation to the Regulator's power to determine an amount that is different from the proposed amount:
  - (a) a different amount determined by the Regulator must not be less than the proposed amount and must not exceed the previous year's reduced acquisitions; and
  - (b) before determining a different amount, the Regulator must:
    - (i) invite the liable entity to comment on the amount that the Regulator proposes to determine; and
    - (ii) consider the liable entity's comments (if any).
- (6) If the Regulator determines an amount under paragraph (3)(a) then, subject to subsection (7), section 38AE applies to the entity and the assessment year as if the amount determined were the previous year's reduced acquisitions.
- (7) If the assessment year's reduced acquisitions exceed the amount determined by more than the prescribed percentage of the amount determined, then:
  - (a) subsection (6) does not apply; and
  - (b) references in section 38AE to the previous year's reduced acquisitions are instead taken to be references to the assessment year's reduced acquisitions.

For this purpose, the ***prescribed percentage*** is the percentage prescribed by the regulations for the purpose of this subsection.
- (8) The Regulator must give the liable entity written notice of the Regulator's decision in relation to the application.
- (9) The Regulator must comply with any requirements prescribed by the regulations in relation to the exercise of the Regulator's functions or powers under this section.

**38AG No energy acquisition statement lodged for previous year:  
application to have amount apply as if it were previous  
year's reduced acquisitions**

- (1) If, for any reason, the liable entity did not lodge an energy acquisition statement for the previous year before 1 April in the assessment year, the liable entity may apply to the Regulator to have an amount (the ***proposed amount***) apply as if it were the previous year's reduced acquisitions for the purpose of applying subsection 38AE(1), (2) or (3) to a quarter (the ***relevant quarter***) of the assessment year.

Note 1: Different amounts may be proposed by the liable entity, and different amounts may be determined by the Regulator, in relation to different quarters of the assessment year.

Note 2: If the liable entity does not make an application under this section, the default rule in section 38AH will apply.

- (2) The application must:
- (a) specify the proposed amount for the relevant quarter; and
  - (b) be made before the end of the assessment year.

Note: For other provisions relating to the making of applications, see section 38AI.

- (3) The Regulator must consider the application and must, in writing:
- (a) determine that the proposed amount, or a different amount, is to apply for the relevant quarter as if it were the previous year's reduced acquisitions; or
  - (b) refuse to make such a determination.
- (4) A determination under subsection (3) is not a legislative instrument.
- (5) In relation to the Regulator's power to determine an amount that is different from the proposed amount for the relevant quarter:
- (a) a different amount determined by the Regulator must not be less than the proposed amount; and
  - (b) before determining a different amount, the Regulator must:
    - (i) invite the liable entity to comment on the amount that the Regulator proposes to determine; and
    - (ii) consider the liable entity's comments (if any).

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- (6) If the Regulator determines an amount for the relevant quarter under paragraph (3)(a), then subsection 38AE(1), (2) or (3) (as the case requires) applies to the relevant quarter as if the amount determined were the previous year's reduced acquisitions.
- (7) The Regulator must give the liable entity written notice of the Regulator's decision in relation to the application.
- (8) The Regulator must comply with any requirements prescribed by the regulations in relation to the exercise of the Regulator's functions or powers under this section.

**38AH No energy acquisition statement lodged for previous year: default rule**

- (1) This section applies, in relation to the first, second or third quarter (the *relevant quarter*) of the assessment year, if:
  - (a) for any reason, the liable entity did not lodge an energy acquisition statement for the previous year before 1 April in the assessment year; and
  - (b) either:
    - (i) the liable entity did not make an application under section 38AG before the end of the assessment year in relation to the relevant quarter; or
    - (ii) the liable entity made such an application in relation to the relevant quarter, but the Regulator refused to make a determination under paragraph 38AG(3)(a) in relation to that quarter.
- (2) If this section applies, then subsection 38AE(1), (2) or (3) (as the case requires) applies to the relevant quarter as if the amount specified in whichever of the following paragraphs applies were the previous year's reduced acquisitions:
  - (a) if the liable entity made relevant acquisitions of electricity in the relevant quarter—the amount of the assessment year's reduced acquisitions;
  - (b) if the liable entity did not make any relevant acquisitions of electricity in the relevant quarter—zero.

**38AI General provisions relating to applications under sections 38AF and 38AG**

*Requirements for applications*

- (1) An application under section 38AF or 38AG must:
  - (a) be in writing; and
  - (b) be in a form approved, in writing, by the Regulator; and
  - (c) include any information required by the regulations; and
  - (d) be accompanied by any documents required by the regulations; and
  - (e) be accompanied by any report required by the regulations; and
  - (f) be accompanied by any fee required by the regulations.
- (2) The approved form of application may provide for verification by statutory declaration of statements in applications.

*Regulator may require further information*

- (3) The Regulator may, by written notice given to a liable entity that has made an application under section 38AF or 38AG, require the entity to give the Regulator, within the period specified in the notice, further information in connection with the application.
- (4) If the entity breaches the requirement, the Regulator may, by written notice given to the entity:
  - (a) refuse to consider the application; or
  - (b) refuse to take any action, or any further action, in relation to the application.

## **Division 1A—Partial exemption from liability to charge**

### **38A Object**

The object of this Division is to provide a partial exemption from large-scale generation shortfall charge and small-scale technology shortfall charge for liable entities in respect of emissions-intensive trade-exposed activities.

### **38B Amount of partial exemption**

The amount of a liable entity's partial exemption for a year is the total, in MWh, of all amounts stated in partial exemption certificates:

- (a) issued in relation to the liable entity for the year; and
- (b) included in the liable entity's energy acquisition statement for the year.

### **38C Information about partial exemptions to be published on Regulator's website**

- (1) If a liable entity receives a partial exemption for a year, the Regulator must, before 1 October in the following year, publish on its website:
  - (a) the name of the entity; and
  - (b) the value in dollars, estimated by the Regulator, of the amount of the entity's partial exemption for the year; and
  - (c) such other information in relation to the partial exemption as is required by the regulations.
- (2) The Regulator must also publish on its website such other information in relation to partial exemptions as is required by the regulations.
- (3) If a liable entity's partial exemption is later reduced or increased, the Regulator must correct the information on its website.



## **Division 2—Renewable power percentage for large-scale generation shortfall charge**

### **39 Regulations to specify renewable power percentage**

- (1) The *renewable power percentage* for a year is the percentage specified in the regulations for the purpose of this subsection. The regulation specifying a percentage for a year must be made on or before 31 March in the year.
- (2) If the regulations do not specify a percentage for a year, the percentage for the year is:
  - (a) for the year commencing on 1 January 2001—0.24%; and
  - (b) for any later year—the rate worked out using the formula:

$$\text{Renewable power percentage for the previous year} \times \frac{\text{Required GWh of renewable source electricity for the year}}{\text{Required GWh of renewable source electricity for the previous year}}$$

- (3) Before the Governor-General makes a regulation under subsection (1), the Minister must take into consideration:
  - (a) the required GWh of renewable source electricity for the year; and
  - (b) the amount estimated as the amount of electricity that will be acquired under relevant acquisitions during the year; and
  - (c) the amount by which the required GWhs of renewable source electricity for all previous years has exceeded, or has been exceeded by, the amount of renewable source electricity required under the scheme in those years; and
  - (d) the amount estimated as the amount of all partial exemptions that will be claimed for the year.
- (3A) If, at the time the Minister takes into consideration the matters referred to in subsection (3), the amount applicable under paragraph (3)(c) is not known, then the Minister may take into consideration an estimate of that amount instead.

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- (4) The amount of renewable source electricity required under the scheme in a year is worked out using the formula:

$$\left( \begin{array}{c} \text{Total electricity} \\ \text{acquired under} \\ \text{relevant acquisitions} \\ \text{during the year, in MWh} \end{array} - \begin{array}{c} \text{Total of all} \\ \text{partial exemptions} \\ \text{for the year,} \\ \text{in MWh} \end{array} \right) \times \begin{array}{c} \text{Renewable} \\ \text{power percentage} \\ \text{for the year} \end{array}$$

- (5) A failure to comply with subsection (3) does not affect the validity of the regulations.

**40 Required GWh of renewable source electricity**

- (1) Subject to subsections (2) to (4), the *required GWh of renewable source electricity* for a year is as set out in the following table:

Required GWh of renewable source electricity	
Year	GWh
2001	300
2002	1100
2003	1800
2004	2600
2005	3400
2006	4500
2007	5600
2008	6800
2009	8100
2010	12500
2011	10400
2012	12300
2013	14200
2014	16100
2015	18000
2016	22600
2017	27200
2018	31800
2019	36400
2020	41000

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<b>Required GWh of renewable source electricity</b>	
<b>Year</b>	<b>GWh</b>
2021	41000
2022	41000
2023	41000
2024	41000
2025	41000
2026	41000
2027	41000
2028	41000
2029	41000
2030	41000

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*Adjustment of targets according to number of valid certificates as at the end of 2010*

- (1A) If, as at the end of the year 2010, the total value, in GWh, of valid renewable energy certificates exceeds 34,500, the table in subsection (1) has effect in accordance with the following paragraphs:
- (a) the number of GWh specified in the table for each of the following years is taken to be increased by half of the excess:
    - (i) the year 2012;
    - (ii) the year 2013;
  - (b) the number of GWh specified in the table for each of the following years is taken to be reduced by one quarter of the excess:
    - (i) the year 2016;
    - (ii) the year 2017;
    - (iii) the year 2018;
    - (iv) the year 2019.
- (1B) As soon as practicable after the end of the year 2010, the Regulator must publish on its website the total value referred to in subsection (1A).

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*Adjustment of targets if there is a WCMG start day*

- (2) If the regulations prescribe a day (the **WCMG start day**) for the purpose of subparagraph 17A(1)(a)(i), the table in subsection (1) has effect (after first taking account of subsection (1A)) in accordance with subsections (3) and (4).
- (3) The number of GWh specified in the table for the year that includes the WCMG start day is taken to be increased by the amount worked out using the formula:

$$850 \text{ GWh} \times \frac{\text{Remaining days in the year}}{\text{Number of days in the year}}$$

where:

**remaining days in the year** means the number of days in the year after the WCMG start day.

- (4) The number of GWh specified in the table in subsection (1) for each later year, other than any year after 2020, is taken to be increased by 850 GWh.
- (5) If, for the year in which the WCMG start day occurs, regulations were made before that day specifying the renewable power percentage for the year, the validity of those regulations is not affected by the fact that the required GWh of renewable source electricity for the year changed, because of subsection (3), after the regulations were made.

## **Division 2A—Small-scale technology percentage for small-scale technology shortfall charge**

### **40A Regulations to specify small-scale technology percentage**

- (1) The *small-scale technology percentage* for a year is the percentage prescribed by the regulations for the purpose of this subsection. The regulations prescribing a percentage for a year must be made on or before 31 March in the year.
- (2) If the regulations do not prescribe a percentage for the year starting on 1 January 2012 or a later year, the *small-scale technology percentage* for that year is the rate worked out using the formula:

$$\text{Previous year's small-scale technology percentage} \times \frac{\text{Certificate value for previous year}}{\text{Certificate value for year before previous year}}$$

where:

*certificate value for previous year* is the total value, in MWh, of small-scale technology certificates created in the previous year.

*certificate value for year before previous year* is the total value, in MWh, of small-scale technology certificates created in the year before the previous year.

- (3) Before the Governor-General makes a regulation under subsection (1) specifying the small-scale technology percentage for a year (the *current year*), the Minister must take into consideration:
  - (a) the estimated value, in MWh, of small-scale technology certificates that will be created in the current year under Subdivisions B and BA of Division 4 of Part 2; and
  - (b) the amount estimated as the amount of electricity that will be acquired under relevant acquisitions during the current year; and
  - (c) the amount estimated as the amount of all partial exemptions that will be claimed for the current year; and
  - (d) if the current year is the year commencing on 1 January 2012 or a later year:

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- (i) the amount by which the previous year's estimate under paragraph (a) exceeded, or was exceeded by, the value, in MWh, of small-scale technology certificates that were created in that year under Subdivisions B and BA of Division 4 of Part 2; and
  - (ii) the amount by which the previous year's estimate under paragraph (b) exceeded, or was exceeded by, the amount of electricity that was acquired under relevant acquisitions during that year; and
  - (iii) the amount by which the previous year's estimate under paragraph (c) exceeded, or was exceeded by, the amount of partial exemptions that were claimed for the previous year.
- (4) If, at the time the Minister takes into consideration the matters referred to in subsection (3), the amount referred to in subparagraph (3)(d)(i), (ii) or (iii) is not known, then the Minister may take into consideration an estimate of that amount instead.
- (5) A failure to comply with subsection (3) does not affect the validity of the regulations.

## **Division 2AA—Emerging renewable energy technologies**

### **40AB Inclusion of emerging renewable energy technologies**

The Minister may, by legislative instrument, determine that an emerging renewable energy technology be included as a renewable energy technology for the purpose of the scheme constituted by this Act.

### **Division 3—Other provisions related to renewable energy shortfall charge**

#### **40B Regulator to publish estimate of small-scale technology percentage**

- (1) Before 31 March in each year, the Regulator must publish on its website an estimate of the small-scale technology percentage for each of the next 2 years.
- (2) An estimate published under this section:
  - (a) does not in any way bind the Regulator, the Commonwealth or any other person; and
  - (b) does not in any way affect the determination of a liable entity's liability to small-scale technology shortfall charge for a year.

#### **40C Regulator to give liable entity estimate of current year's required surrender amounts for first 3 quarters**

- (1) If a liable entity lodges an energy acquisition statement for a year before 1 April in the next year (the *current year*), the Regulator must, before 15 April in the current year, give the liable entity written notice of the amounts that the Regulator estimates will be the liable entity's required surrender amounts under section 38AE for the first, second and third quarters of the current year.
- (2) In making an estimate under subsection (1), the Regulator is to disregard any determination made by the Regulator under section 38AF on or after 1 April in the current year.
- (3) An estimate given to a liable entity under this section:
  - (a) does not in any way bind the Regulator, the Commonwealth or any other person; and
  - (b) does not in any way affect the determination of the liable entity's liability to small-scale technology shortfall charge for a year.



#### **41 Arrangements to avoid or reduce renewable energy shortfall charge**

If:

- (a) a liable entity makes an arrangement; and
- (b) as a result of the arrangement the liable entity's large-scale generation shortfall or small-scale technology shortfall in a year is reduced; and
- (c) in the Regulator's opinion the arrangement was made solely or principally for the purpose of avoiding payment of renewable energy shortfall charge otherwise than in accordance with this Act;

the liable entity is liable to pay for the year an amount of renewable energy shortfall charge equal to the amount that, in the Regulator's opinion, the liable entity would have been liable to pay if the arrangement had not been made.

Note: See also section 101 (about payment of penalty charge).

#### **42 Application of Act to Commonwealth**

- (1) The Commonwealth is not liable to pay renewable energy shortfall charge, penalty charge or interest charge that is payable under this Act. However, it is the Parliament's intention that the Commonwealth should be notionally liable to pay renewable energy shortfall charge, penalty charge and interest charge.
- (2) The Minister for Finance may give such written directions as are necessary or convenient for carrying out or giving effect to subsection (1) and, in particular, may give directions in relation to the transfer of money within an account, or between accounts, operated by the Commonwealth.
- (3) Directions under subsection (2) have effect, and must be complied with, despite any other Commonwealth law.
- (4) In subsections (1) and (2):

**Commonwealth** includes:

- (a) an Agency (within the meaning of the *Financial Management and Accountability Act 1997*); and
- (b) a Commonwealth authority (within the meaning of the *Commonwealth Authorities and Companies Act 1997*);

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that cannot be made liable to taxation by a Commonwealth law.

**43 Cancellation of exemptions from charges**

- (1) This section cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay charge payable under this Act.
- (2) The cancellation does not apply if the provision of the other Act:
  - (a) commences after this section commences; and
  - (b) refers specifically to charge payable under this Act.

## **Part 5—Statements, certificates and assessments**

### **Division 1AA—Preliminary**

#### **43A Overview of Part**

This Part deals with various matters relating to the determination of a liable entity's liability to renewable energy shortfall charge.

Subdivision A of Division 1 requires the lodgment of annual energy acquisition statements by liable entities. The entity may surrender renewable energy certificates for the year (or for the quarters of the year) in the statement. The entity may surrender additional certificates in certain circumstances.

Subdivision B of Division 1 requires the lodgment of annual renewable energy shortfall statements by entities that have large-scale generation shortfalls or small-scale technology shortfalls.

Division 1A deals with the issue and amendment of partial exemption certificates.

Division 2 deals with the assessment of liability to renewable energy shortfall charge, and for the amendment of assessments. It also deals with other related matters.

## Division 1—Statements

### Subdivision A—Annual energy acquisition statements

#### 44 Annual energy acquisition statements

- (1) A liable entity that acquired electricity under a relevant acquisition during a year (the *assessment year*) must lodge an energy acquisition statement for the year on or before:
  - (a) 14 February in the next year; or
  - (b) any later day allowed by the Regulator.

Note: For amendment of such statements, see section 45A.

- (2) The statement must set out:
  - (a) the name and postal address of the liable entity; and
  - (b) the amount, in MWh, of electricity acquired by the liable entity under relevant acquisitions during the assessment year; and
  - (c) whether the liable entity wishes to claim a partial exemption for the assessment year (see also subsection (3)); and
  - (d) the large-scale charge information (see subsection (4)); and
  - (e) the small-scale charge information (see subsection (5)); and
  - (f) any other information required by the regulations.
- (3) If the liable entity wishes to claim a partial exemption for the assessment year, the statement must be accompanied by:
  - (a) a copy of each partial exemption certificate issued to the liable entity for the assessment year in relation to an emissions-intensive trade-exposed activity carried on by the liable entity during the year; and
  - (b) a copy of each partial exemption certificate issued to another person in relation to the liable entity for the assessment year and given to the liable entity.
- (4) For the purpose of paragraph (2)(d), the *large-scale charge information* is:
  - (a) the value, in MWh, of large-scale generation certificates being surrendered for the assessment year under section 44A; and

- (b) the amount of any carried forward shortfall or carried forward surplus that the liable entity had for the previous year; and
  - (c) the amount of any carried forward surplus that the liable entity has for the assessment year.
- (5) For the purpose of paragraph (2)(e), the *small-scale charge information* is:
  - (a) for each of the quarters of the assessment year—the value, in MWh, of small-scale technology certificates that have been or are being surrendered for the quarter under section 45 during the surrender period for the quarter; and
  - (b) the amounts of any quarterly surpluses and quarterly shortfalls that the liable entity has for the quarters of the assessment year; and
  - (c) the amount of any quarterly surplus that the liable entity had for the fourth quarter of the previous year; and
  - (d) if the Regulator has, under section 38AF, determined an amount that is to apply instead of the previous year's reduced acquisitions—the amount so determined; and
  - (e) if the Regulator has, under section 38AG, determined an amount that is to apply, for a quarter of the assessment year, as if it were the previous year's reduced acquisitions—the amount so determined for that quarter; and
  - (f) if section 38AH applies in relation to a quarter of the assessment year—a statement as to whether the liable entity made any relevant acquisitions of electricity in that quarter.
- (6) The statement must:
  - (a) be in a form approved by the Regulator; and
  - (b) be lodged with the Regulator in accordance with the regulations; and
  - (c) be signed by or on behalf of the liable entity making the statement.

#### **44A Surrender of large-scale generation certificates in energy acquisition statement**

- (1) A liable entity may surrender large-scale generation certificates for a year by including details of the large-scale generation certificates

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(the *identified certificates*) that it is surrendering for the year in its energy acquisition statement for the year.

Note: For limitations on the certificates that can be surrendered, see section 45D.

- (2) The identified certificates are taken to be surrendered when the energy acquisition statement is lodged, other than any of those certificates that cannot be surrendered because of section 45D.
- (3) The Regulator must, by notice in writing given to the liable entity, advise the entity of:
  - (a) the number of the identified certificates that (taking account of section 45D) are able to be surrendered for the year; and
  - (b) the fee payable by the entity under section 45E in respect of the surrender of those certificates.
- (4) A notice under subsection (3) is not a legislative instrument.

#### 45 Surrender of small-scale technology certificates in quarterly surrender instrument

*Surrender of small-scale technology certificates on a quarterly basis*

- (1) A liable entity may surrender small-scale technology certificates for a quarter of a year by including details of the small-scale technology certificates (the *identified certificates*) that it is surrendering for the quarter in whichever of the following (the *surrender instrument*) applies:
  - (a) for the first, second or third quarter of the year—a notice that:
    - (i) is in a form approved by the Regulator; and
    - (ii) is lodged, before the end of the surrender period for the quarter, in accordance with the regulations; and
    - (iii) is signed by or on behalf of the liable entity;
  - (b) for the fourth quarter of the year—the liable entity's energy acquisition statement for the year.

Note: For limitations on the certificates that can be surrendered, see section 45D.

- (2) The identified certificates are taken to be surrendered when the surrender instrument is lodged, other than any of those certificates that cannot be surrendered because of section 45D.

*Regulator to give liable entity notice relating to surrenders for first, second or third quarter*

- (3) After the liable entity has lodged the surrender instrument for the first, second or third quarter, the Regulator must, by notice in writing given to the liable entity, advise the liable entity of the number of the identified certificates for the quarter that (taking account of section 45D) are able to be surrendered for the quarter.

*Regulator to give liable entity notice relating to total surrenders for the year*

- (4) After the liable entity has lodged its energy acquisition statement for the year, the Regulator must, by notice in writing given to the liable entity, advise the liable entity of:
- (a) the number of the identified certificates for each quarter of the year that (taking account of section 45D) are or were able to be surrendered for the quarter; and
  - (b) the fee payable by the entity under section 45E in respect of the surrender of those certificates.

*Notices are not legislative instruments*

- (5) A notice under subsection (3) or (4) is not a legislative instrument.

#### **45A Amending energy acquisition statement at request of liable entity**

- (1) The Regulator may amend an energy acquisition statement for a year if the liable entity requests, in writing, an amendment within 12 months of lodging the statement.

Note: An amendment of an energy acquisition statement under this section may also result in the Regulator issuing an assessment under section 48 or 48B or amending an assessment under section 49.

- (2) If the Regulator refuses to amend an energy acquisition statement under subsection (1) upon a request by a liable entity, the Regulator must notify the entity accordingly.

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*Amendment to surrender additional certificates*

- (3) The liable entity may, under subsection (1), request an amendment to its energy acquisition statement for a year to:
- (a) surrender additional large-scale renewable energy certificates for the year (subject to section 45D); or
  - (b) surrender additional small-scale technology certificates for the fourth quarter of the year (subject to section 45D).

Note 1: Small-scale technology certificates for the first 3 quarters of the year are surrendered by notices under paragraph 45(1)(a). Those notices cannot be amended.

Note 2: This subsection does not limit the kinds of amendment that the liable entity may request.

- (4) The request must include details of the additional certificates (the ***identified certificates***) that the liable entity wishes to surrender for the year or the quarter.
- (5) If the Regulator agrees to the request (in whole or in part) the Regulator must, by notice in writing to the liable entity, advise the entity of:
- (a) the number of the identified certificates in relation to which the following subparagraphs are satisfied:
    - (i) the Regulator agrees to make the amendment to surrender the certificates;
    - (ii) the certificates (taking account of section 45D) are able to be surrendered for the year or the quarter; and
  - (b) the fee payable by the entity under section 45E in respect of the surrender of the certificates (the ***agreed certificates***) in relation to which subparagraphs (a)(i) and (ii) are satisfied.
- (6) A notice under subsection (5) is not a legislative instrument.
- (7) Subject to subsection (8), the agreed certificates are taken to have been surrendered when the Regulator makes the amendment of the energy acquisition statement.
- (8) If the agreed certificates are small-scale technology certificates, then, for the purpose of determining the number of such certificates surrendered by the entity during the surrender period for the fourth quarter, the certificates are taken to have been surrendered during that period.



*No amendment to reduce number of certificates surrendered*

- (9) An energy acquisition statement cannot be amended under this section to reduce the number of certificates previously surrendered.

#### **45B Amending energy acquisition statement on Regulator's own initiative**

- (1) The Regulator may amend an energy acquisition statement for a year on the Regulator's own initiative if the amendment is made within 4 years of the liable entity lodging the statement.

Note: An amendment of an energy acquisition statement under this section may also result in the Regulator issuing an assessment under section 48 or 48B or amending an assessment under section 49.

- (2) The Regulator must give the liable entity written notice of the amendment.
- (3) An energy acquisition statement cannot be amended under this section to increase or reduce the number of certificates previously surrendered.

#### **45C Surrender of additional certificates if energy acquisition statement amended on Regulator's own initiative**

- (1) This section applies if a liable entity's energy acquisition statement for a year is amended under section 45B so that either of the following, if calculated on the basis of the amounts and other information contained in the statement, is greater than it would have been if the amendment had not been made:
- (a) the liable entity's large-scale generation shortfall for the year;
  - (b) the liable entity's quarterly shortfall for the fourth quarter of the year.
- (2) The liable entity may (subject to section 45D) surrender additional certificates for the year or quarter by giving the Regulator a notice (an ***additional surrender notice***) that:
- (a) includes details of the certificates (the ***identified certificates***) being surrendered; and
  - (b) is in a form approved by the Regulator; and
  - (c) is lodged with the Regulator, in accordance with the regulations, within the period of 30 days beginning on the

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day on which the liable entity received notice of the amendment; and

(d) is signed by or on behalf of the liable entity.

- (3) Subject to subsection (4), the identified certificates are taken to be surrendered when the additional surrender notice is lodged.
- (4) If the identified certificates are small-scale technology certificates, then, for the purpose of determining the number of such certificates surrendered by the entity during the surrender period for the fourth quarter, the certificates are taken to have been surrendered during that period.
- (5) The Regulator must, by notice in writing given to the liable entity, advise the entity of:
  - (a) the number of the identified certificates that (taking account of section 45D) are able to be surrendered for the year or quarter; and
  - (b) the fee payable by the entity under section 45E in respect of the surrender of those certificates.
- (6) A notice under subsection (5) is not a legislative instrument.

**45D Limitations on certificates that can be surrendered under this Subdivision**

*Large-scale generation certificates*

- (1) A liable entity cannot surrender a large-scale generation certificate for a year under this Subdivision unless:
  - (a) the certificate was created before the end of the year; and
  - (b) the liable entity is recorded in the register of large-scale generation certificates as the owner of the certificate at whichever of the following times applies:
    - (i) for surrender under section 44A—the time when the energy acquisition statement is lodged;
    - (ii) for surrender under section 45A—the time when the Regulator makes the amendment of the energy acquisition statement;
    - (iii) for surrender under section 45C—the time when the additional surrender notice is lodged; and

- (c) the certificate is valid at the time that applies under paragraph (b).

*Small-scale technology certificates*

- (2) A liable entity cannot surrender a small-scale technology certificate for a quarter of a year under this Subdivision unless:
  - (a) either:
    - (i) the liable entity acquired the certificate under Division 4 of Part 2A (purchase of certificates through the clearing house); or
    - (ii) if subparagraph (i) does not apply—the certificate was created before the end of the year; and
  - (b) the liable entity is recorded in the register of small-scale technology certificates as the owner of the certificate at whichever of the following times applies:
    - (i) for surrender under section 45—the time when the surrender instrument for the quarter is lodged;
    - (ii) for surrender under section 45A—the time when the Regulator makes the amendment of the energy acquisition statement;
    - (iii) for surrender under section 45C—the time when the additional surrender notice is lodged; and
  - (c) the certificate is valid at the time that applies under paragraph (b).
- (3) The liable entity cannot surrender a small-scale technology certificate for a quarter of the year under this Subdivision if, at the time that applies under paragraph (2)(b), the certificate is on the clearing house transfer list (see section 30L).

**45E Fees for surrender of certificates under this Subdivision**

- (1) The regulations may prescribe the fee payable for the surrender of a certificate under this Subdivision.
- (2) If a liable entity is given a notice under section 44A, 45, 45A or 45C advising the entity of the fee payable in respect of the surrender of certificates, the liable entity must pay the fee within the period of 28 days beginning on the day the entity receives the notice.

- (3) If the fee specified in the notice is unpaid at the end of that period of 28 days, it is a debt due to the Commonwealth and is recoverable by the Regulator in a court of competent jurisdiction.

## Subdivision B—Annual renewable energy shortfall statements

### 46 Annual renewable energy shortfall statements

- (1) There are 2 different types of *renewable energy shortfall statement*:
  - (a) a *large-scale generation shortfall statement* (see subsections (2) and (3)); and
  - (b) a *small-scale technology shortfall statement* (see subsections (4) and (5)).

#### *Large-scale generation shortfall statement*

- (2) A liable entity that has a large-scale generation shortfall for a year (the *assessment year*) must lodge a large-scale generation shortfall statement for the year on or before:
  - (a) 14 February in the next year; or
  - (b) any later day allowed by the Regulator.
- (3) The statement must set out:
  - (a) the name and postal address of the liable entity; and
  - (b) the liable entity's large-scale generation shortfall for the assessment year; and
  - (c) the amount of any carried forward shortfall or carried forward surplus that the liable entity had for the previous year; and
  - (d) either:
    - (i) the amount of carried forward shortfall that the liable entity has for the assessment year; or
    - (ii) the amount of large-scale generation shortfall charge that is payable by the liable entity for the assessment year; and
  - (e) any other information required by the regulations.

*Small-scale technology shortfall statement*

- (4) A liable entity that has a small-scale technology shortfall for a year (the **assessment year**) must lodge a small-scale technology shortfall statement for the year on or before:
- (a) 14 February in the next year; or
  - (b) any later day allowed by the Regulator.
- (5) The statement must set out:
- (a) the name and postal address of the liable entity; and
  - (b) the liable entity's small-scale technology shortfall for the assessment year; and
  - (c) the amount of small-scale technology shortfall charge that is payable by the liable entity for the assessment year; and
  - (d) any other information required by the regulations.

*General requirements for statements*

- (6) A statement under this section must:
- (a) be in a form approved by the Regulator; and
  - (b) be lodged with the Regulator in accordance with the regulations; and
  - (c) be signed by or on behalf of the liable entity making the statement.

## **Division 1A—Partial exemption certificates**

### **46A Application for partial exemption certificate**

- (1) A prescribed person may apply to the Regulator for a certificate (a *partial exemption certificate*) for a year in relation to:
  - (a) an emissions-intensive trade-exposed activity which is, or is to be, carried on at a site during the year; and
  - (b) either:
    - (i) a person who is, or will be, a liable entity from whom electricity is, or will be, acquired for use at the site in the activity; or
    - (ii) if the prescribed person is, or will be, a liable entity—the prescribed person.
- (2) The application must:
  - (a) be in a form approved by the Regulator; and
  - (b) include any information prescribed by the regulations; and
  - (ba) be accompanied by any documents required by the regulations; and
  - (bb) be accompanied by any report required by the regulations; and
  - (c) be lodged with the Regulator in the time and manner prescribed by the regulations; and
  - (d) be signed by or on behalf of the applicant.
- (3) The regulations may provide that information required to be included in an application must be verified by statutory declaration.

### **46B Partial exemption certificates**

- (1) If an application is made under section 46A in respect of a year, the Regulator must (subject to section 46E) issue the applicant with a partial exemption certificate for the year that sets out, in relation to the liable entity mentioned in the application (as referred to in paragraph 46A(1)(b)):
  - (a) the amount of the liable entity's partial exemption for the year in relation to the emissions-intensive trade-exposed

- activity and site mentioned in the application, calculated according to a method prescribed by the regulations; and
  - (b) any other information prescribed by the regulations.
- (2) The Regulator must issue the certificate within the period prescribed by the regulations.
  - (3) A certificate issued under subsection (1) is not a legislative instrument.

#### **46C Amending partial exemption certificates**

- (1) The Regulator may amend a partial exemption certificate if the person to whom the certificate is issued requests, in writing, an amendment.
- (2) In deciding whether to amend a partial exemption certificate under subsection (1), the Regulator:
  - (a) must have regard to the matters prescribed by the regulations; and
  - (b) may have regard to any other matter that it considers relevant.
- (3) The Regulator may also amend a partial exemption certificate on its own initiative in circumstances prescribed by the regulations.
- (4) If the Regulator refuses to amend a partial exemption certificate upon a request by a person, the Regulator must notify the person accordingly.

**Note:** An amendment of a partial exemption certificate under this section may also result in the Regulator issuing an assessment under section 48 or 48B or amending an assessment under section 49.

#### **46D Minister may obtain information from corporation**

- (1) This section applies to a corporation to which paragraph 51(xx) of the Constitution applies if:
  - (a) a person (who may be the corporation) has:
    - (i) indicated to the Commonwealth that the person believes that an activity should be made an emissions-intensive trade-exposed activity; and

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- (ii) provided information to the Commonwealth in support of that belief that satisfies any requirements of regulations made for the purpose of this paragraph; and
- (b) that activity is not an emissions-intensive trade-exposed activity; and
- (c) the Minister believes on reasonable grounds that the corporation has information that relates to the activity and that is likely to assist the Commonwealth with either or both of the following:
  - (i) deciding whether the activity should be made an emissions-intensive trade-exposed activity;
  - (ii) deciding how any partial exemption in relation to the activity should be calculated (if the activity is made an emissions-intensive trade-exposed activity).

*Request for information and report*

- (2) The Minister may, by written notice given to the corporation:
  - (a) request the corporation to give to the Minister, within the period and in the manner and form specified in the notice, any such information; and
  - (b) request that the information be accompanied by a report specified in the notice.
- (3) A period specified under subsection (2) must not be shorter than 60 days after the notice is given.

*Request for information*

- (4) The Minister may, by written notice given to the corporation, request the corporation to give to the Minister, within the period and in the manner and form specified in the notice, any such information.
- (5) A period specified under subsection (4) must not be shorter than 30 days after the notice is given.

**46E No partial exemption certificates to be issued to corporation for 5 years if Minister's request not complied with**

- (1) This section applies if:



- (a) a corporation is given a request under subsection 46D(2) or (4) at a particular time (the *request time*); and
  - (b) the corporation is capable of complying with the request; and
  - (c) the corporation refuses or fails to comply with the request; and
  - (d) the Minister notifies the Regulator, in writing, that the Minister considers that the non-compliance is significant.
- (2) No partial exemption certificates are to be issued to the corporation in relation to the activity for:
  - (a) the first year that begins after the request time; and
  - (b) any of the next 4 years after that year.

#### **46F Disclosure of information to the Regulator**

##### *Scope*

- (1) This section applies to information obtained under section 46D.

##### *Disclosure*

- (2) The Minister may disclose the information to the Regulator for the purposes of, or in connection with, the performance of the functions, or the exercise of the powers, of the Regulator under this Act and the regulations.

##### *Other powers of disclosure not limited*

- (3) This section does not, by implication, limit the Minister's powers to disclose the information to a person other than the Regulator.

## Division 2—Assessments

### Subdivision A—Large-scale generation shortfall charge

#### 47 First large-scale generation shortfall statement taken to be assessment of large-scale generation shortfall charge

- (1) This section applies if:
  - (a) a liable entity lodges a large-scale generation shortfall statement for a year (the *assessment year*); and
  - (b) a large-scale generation shortfall statement has not previously been lodged, and an assessment of large-scale generation shortfall charge has not previously been made, for the assessment year in relation to the liable entity.
- (2) The statement has effect as an assessment of the liable entity's large-scale generation shortfall for the assessment year and of the large-scale generation shortfall charge (if any) payable on the shortfall.
- (3) The assessment is taken to have been made on 14 February in the next year or the day on which the statement was lodged, whichever is the later.
- (4) The large-scale generation shortfall specified in the statement is taken to be the liable entity's large-scale generation shortfall for the assessment year.
- (5) The amount of large-scale generation shortfall charge (if any) specified in the statement is taken to be the amount of large-scale generation shortfall charge payable by the liable entity for the assessment year.
- (6) The statement has effect as if it were a notice of assessment signed by the Regulator and given to the liable entity on the day on which the assessment is taken to have been made.

#### 48 Default assessments of large-scale generation shortfall charge

- (1) If a liable entity has lodged an energy acquisition statement for a year but:

- (a) the liable entity has not lodged a large-scale generation shortfall statement for the year; and
  - (b) the Regulator is of the opinion that the liable entity has a large-scale generation shortfall for the year;the Regulator may make an assessment of the liable entity's large-scale generation shortfall for the year, and of the large-scale generation shortfall charge (if any) payable on the shortfall.
- (2) If:
  - (a) a liable entity has not lodged a large-scale generation shortfall statement for a year; and
  - (b) the liable entity has also not lodged an energy acquisition statement for the year; and
  - (c) the Regulator is of the opinion that the liable entity has a large-scale generation shortfall for the year;the Regulator may make an assessment of the liable entity's large-scale generation shortfall for the year, and of the large-scale generation shortfall charge (if any) payable on the shortfall.
- (3) For the purpose of making an assessment under subsection (1) or (2):
  - (a) the liable entity's large-scale generation shortfall is taken to be the amount that, in the Regulator's opinion, might reasonably be expected to be the shortfall; and
  - (b) in the case of an assessment under subsection (1)—the Regulator is to take into account any large-scale generation certificates surrendered by the liable entity under Subdivision A of Division 1 for the year; and
  - (c) in the case of an assessment under subsection (2)—the Regulator is to assume that the liable entity did not surrender any large-scale generation certificates under Subdivision A of Division 1 for the year.
- (4) Large-scale generation shortfall charge in relation to an assessment for a year made under this section is taken to have become payable on 14 February in the next year.
- (5) An assessment for a year under this section cannot be made until after 14 February in the next year.

### **Subdivision B—Small-scale technology shortfall charge**

#### **48A First small-scale technology shortfall statement taken to be assessment of small-scale shortfall charge**

- (1) This section applies if:
  - (a) a liable entity lodges a small-scale technology shortfall statement for a year (the *assessment year*); and
  - (b) a small-scale technology shortfall statement has not previously been lodged, and an assessment of small-scale shortfall charge has not previously been made, for the assessment year in relation to the liable entity.
- (2) The statement has effect as an assessment of the liable entity's small-scale technology shortfall for the assessment year and of the small-scale technology shortfall charge payable on the shortfall.
- (3) The assessment is taken to have been made on 14 February in the next year or the day on which the statement was lodged, whichever is the later.
- (4) The small-scale technology shortfall specified in the statement is taken to be the liable entity's small-scale technology shortfall for the assessment year.
- (5) The amount of small-scale technology shortfall charge specified in the statement is taken to be the amount of small-scale technology shortfall charge payable by the liable entity for the assessment year.
- (6) The statement has effect as if it were a notice of assessment signed by the Regulator and given to the liable entity on the day on which the assessment is taken to have been made.

#### **48B Default assessments of small-scale technology shortfall charge**

- (1) If a liable entity has lodged an energy acquisition statement for a year but:
  - (a) the liable entity has not lodged a small-scale technology shortfall statement for the year; and

- (b) the Regulator is of the opinion that the liable entity has a small-scale technology shortfall for the year;  
the Regulator may make an assessment of the liable entity's small-scale technology shortfall for the year, and of the small-scale technology shortfall charge payable on the shortfall.
- (2) If:
  - (a) a liable entity has not lodged a small-scale technology shortfall statement for a year; and
  - (b) the liable entity has also not lodged an energy acquisition statement for the year; and
  - (c) the Regulator is of the opinion that the liable entity has a small-scale technology shortfall for the year;  
the Regulator may make an assessment of the liable entity's small-scale technology shortfall for the year, and of the small-scale technology shortfall charge payable on the shortfall.
- (3) For the purpose of making an assessment under subsection (1) or (2):
  - (a) the liable entity's small-scale technology shortfall is taken to be the amount that, in the Regulator's opinion, might reasonably be expected to be the shortfall; and
  - (b) the Regulator is to take into account any small-scale technology certificates surrendered by the liable entity for any of the quarters of the year under Subdivision A of Division 1.
- (4) Small-scale technology shortfall charge in relation to an assessment for a year made under this section is taken to have become payable on 14 February in the next year.
- (5) An assessment for a year under this section cannot be made until after 14 February in the next year.

### **Subdivision C—Other provisions relating to assessments**

#### **49 Amendment of assessments**

- (1) The Regulator may, subject to this section, at any time amend any assessment by making any alterations or additions that the Regulator thinks necessary, whether or not renewable energy shortfall charge has been paid in relation to the assessment.

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Note: This Division does not apply in relation to an assessment under section 102: see section 53A.

- (2) Subject to this section, if there has been an avoidance of renewable energy shortfall charge, the Regulator may:
  - (a) if the Regulator is of the opinion that the avoidance of the charge is due to fraud or evasion—at any time; or
  - (b) in any other case—within 4 years from the day on which the assessment is made;amend the assessment by making any alterations or additions that the Regulator thinks necessary to correct the assessment.
- (3) Subject to subsection (5), an amendment effecting a reduction in a liable entity's liability under an assessment is not effective unless it is made within 4 years from the day on which the assessment was made.
- (4) If an assessment has, under this section, been amended in any particular, the Regulator may, within 4 years from the day on which renewable energy shortfall charge became payable under the amended assessment, make, in or in relation to the particular, any further amendment in the assessment that, in the Regulator's opinion, is necessary to effect such reduction in the liable entity's liability under the assessment as is just.
- (5) If:
  - (a) a liable entity applies for an amendment of the liable entity's assessment within 4 years from the day that renewable energy shortfall charge became payable under the assessment; and
  - (b) within that period, the liable entity lodges all information the Regulator needs to decide the application;the Regulator may amend the assessment when considering the application, even if that period has elapsed.
- (6) Nothing in this section prevents the amendment of an assessment to give effect to:
  - (a) a decision on any review or appeal; or
  - (b) a decision to reduce any particular following the liable entity's objection or pending any review or appeal.
- (7) Renewable energy shortfall charge under an amended assessment is taken to have become payable:

- (a) if the amendment is wholly or partly as a result of an error by the Regulator—on the day on which the amended assessment is made; or
- (b) in any other case—on the day on which charge under the original assessment became payable.

## **50 Refund of overpaid amounts**

- (1) If, because an assessment is amended, a person's liability to renewable energy shortfall charge is reduced:
  - (a) the amount by which the charge is reduced is taken, for the purposes of section 70, never to have been payable; and
  - (b) the Regulator must:
    - (i) refund any overpaid amount; or
    - (ii) apply any overpaid amount against the person's liability (if any) to the Commonwealth and refund any part of the amount that is not so applied.
- (2) In subsection (1):

*overpaid amount* includes any overpaid amount of penalty charge or interest charge.

## **51 Amended assessment to be an assessment**

Except as otherwise expressly provided by this Act, an amended assessment is taken to be an assessment for all the purposes of this Act.

## **52 Notice of assessment**

As soon as practicable after an assessment is made under section 48 or 48B or is amended under section 49, the Regulator must give written notice of the assessment or amendment (as the case may be) to the liable entity concerned.

## **53 Validity of assessment**

The validity of an assessment is not affected because any provision of this Act has not been complied with.

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**53A Application of Division**

This Division does not apply in relation to an assessment under section 102.



## **Part 6—Objections, reviews and appeals**

### **Division 1—Objections to and review of assessments**

#### **54 Objections**

- (1) A liable entity who is dissatisfied with an assessment may object in the manner set out in this Division.
- (2) This Division does not apply in relation to an assessment under section 102.

Note:        However, a person may seek review of a decision to make an assessment under section 102: see Division 2.

#### **55 How objections are to be made**

A liable entity making an objection must:

- (a) make it in writing; and
- (b) lodge it with the Regulator within 60 days after the assessment is made; and
- (c) state in it, fully and in detail, the grounds that the liable entity relies on.

#### **56 Limited objection rights in the case of certain amended assessments**

If the objection is made against an amended assessment, then a liable entity's right to object against the amended assessment is limited to a right to object against alterations or additions made as part of the amendment of the assessment.

#### **57 Requests for extension of time**

- (1) If the 60 days specified in paragraph 55(b) have passed, the liable entity may nevertheless lodge the objection with the Regulator together with a written request asking the Regulator to deal with the objection as if it had been lodged within the 60 days.

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- (2) The request must state fully and in detail the circumstances concerning, and the reasons for, the liable entity's failure to lodge the objection with the Regulator within the 60 days.
- (3) After considering the request, the Regulator must decide whether to agree to it or refuse it.
- (4) The Regulator must give the liable entity written notice of the Regulator's decision.
- (5) If the Regulator decides to agree to the request, then, for the purposes of this Part, the objection is taken to have been lodged with the Regulator within the 60 days.
- (6) If the Regulator decides to refuse the request, the liable entity may apply to the Administrative Appeals Tribunal for review of the decision.

**58 Regulator to decide objections**

- (1) If the objection has been lodged with the Regulator within the 60 days, the Regulator must decide whether to:
  - (a) allow it, wholly or in part; or
  - (b) disallow it.
- (2) Such a decision is in this Part called an *objection decision*.
- (3) The Regulator must cause to be served on the liable entity written notice of the Regulator's objection decision.

**59 Person may require Regulator to make an objection decision**

- (1) This section applies if the objection has been lodged with the Regulator within the 60 days and the Regulator has not made an objection decision by whichever is the later of the following times:
  - (a) the end of the period (the *original 60-day period*) of 60 days after whichever is the later of the following days:
    - (i) the day on which the objection is lodged with the Regulator;
    - (ii) if the Regulator decides under section 57 to agree to a request in relation to the objection—the day on which the decision is made;

- (b) if the Regulator, by written notice served on the liable entity within the original 60-day period, requires the liable entity to give information relating to the objection—the end of the period of 60 days after the Regulator receives that information.
- (2) The liable entity may give the Regulator a written notice requiring the Regulator to make an objection decision.
- (3) If the Regulator has not made an objection decision by the end of the period of 60 days after being given the notice, then, at the end of that period, the Regulator is taken to have made a decision under subsection 58(1) to disallow the objection.

## **60 Liable entity may seek review of, or appeal against, Regulator's decision**

If the liable entity is dissatisfied with the Regulator's objection decision, the liable entity may either:

- (a) apply to the Administrative Appeals Tribunal for review of the decision; or
- (b) appeal to the Federal Court against the decision.

Note: Time limits for making applications to the Administrative Appeals Tribunal, and matters related to procedures before that Tribunal are set out in the *Administrative Appeals Tribunal Act 1975*.

## **61 Grounds of objection and burden of proof**

In proceedings under this Part on a review before the Administrative Appeals Tribunal or on appeal to the Federal Court:

- (a) the liable entity is, unless the Administrative Appeals Tribunal or the Federal Court otherwise orders, limited to the grounds stated in the objection; and
- (b) the burden of proving that a prescribed decision is incorrect, or that an assessment is excessive, lies on the liable entity.

## **62 Time limit for appeals**

An appeal to the Federal Court against an objection decision must be lodged with the Court within 60 days after the liable entity appealing is served with notice of the decision.

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**63 Order of Federal Court on objection decision**

Where the Federal Court hears an appeal against an objection decision under section 60, the Court may make such order in relation to the decision as it thinks fit, including an order confirming or varying the decision.

**64 Implementation of Federal Court order in respect of objection decision**

- (1) When the order of the Federal Court in relation to the decision becomes final, the Regulator must, within 60 days, take such action, including amending any assessment or determination concerned, as is necessary to give effect to the decision.
- (2) For the purposes of subsection (1):
  - (a) if the order is made by the Federal Court constituted by a single Judge and no appeal is lodged against the order within the period for lodging an appeal—the order becomes final at the end of the period; and
  - (b) if the order is made by the Full Court of the Federal Court and no application for special leave to appeal to the High Court against the order is made within the period of 30 days after the order is made—the order becomes final at the end of the period.

**65 Pending appeal not to affect implementation of decisions**

The fact that an appeal is pending in relation to a decision does not in the meantime interfere with, or affect, the decision and any renewable energy shortfall charge, penalty charge, interest charge or other amount may be recovered as if no appeal were pending.

## Division 2—Review of other decisions

### 66 Review of decisions

- (1) An affected person in relation to a reviewable decision may request that the Regulator reconsider the decision. The following table sets out the reviewable decisions and, for each decision, sets out the provision under which it is made and the affected person in relation to it.

<b>Table of reviewable decisions</b>			
<b>Item</b>	<b>For a decision ...</b>	<b>made under ...</b>	<b>the affected person is ...</b>
1	to refuse to register a person	section 11	the person.
1A	in relation to an application under section 12A (about provisional accreditation of power stations)	section 12B	the applicant.
2	in relation to an application for accreditation of a power station	section 14	the applicant for accreditation.
3	to refuse to accredit a power station	section 15	the applicant for accreditation.
3A	to amend, or to refuse to amend, an electricity generation return	section 20A	the nominated person for the accredited power station concerned.
4	not to register a certificate	section 26	the person who created the certificate.
5	to suspend a person's registration	section 30 or 30A	the registered person.
5A	to refuse to approve a person as the nominated person for an accredited power station	section 30B	the person.
5B	to vary, or to refuse to vary, a determination under paragraph 14(1)(a)	section 30C	the nominated person for the accredited power station concerned.

**Part 6** Objections, reviews and appeals

**Division 2** Review of other decisions

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<b>Table of reviewable decisions</b>			
<b>Item</b>	<b>For a decision ...</b>	<b>made under ...</b>	<b>the affected person is ...</b>
5C	to suspend the accreditation of an accredited power station	section 30D or 30E	the nominated person for the power station.
5D	to vary the 1997 eligible renewable power baseline for an accredited power station	section 30F	the nominated person for the power station.
5DA	to vary the 2008 WCMG limit for an accredited power station	section 30G	the nominated person for the power station
5DB	to refuse to determine an amount, or to determine an amount that is different from the proposed amount	section 38AF or 38AG	the applicant for a determination.
5E	to amend, or to refuse to amend, an energy acquisition statement	section 45A or 45B	the liable entity concerned.
5F	to amend, or to refuse to amend, a partial exemption certificate	section 46C	the person to whom the certificate is issued.
6	assessing penalty charge	section 102	the liable entity that is liable to pay the penalty charge.
7	not to remit, or to remit only a part of, penalty charge	section 103	the liable entity that is liable to pay the penalty charge.

(2) The request must be:

- (a) in writing; and
- (b) given to the Regulator within 60 days of the making of the decision.

(3) The Regulator must reconsider the decision and confirm, vary or set aside the decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

(4) The Regulator is taken to have confirmed the decision under subsection (3) if the Regulator does not give written notice of the

Regulator's decision under that subsection within 60 days of the request.

- (5) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Regulator under subsection (3) to confirm, vary or set aside the decision.

## **Part 7—Collection and recovery of charge**

### **Division 1—General rules about collection and recovery**

#### **67 When renewable energy shortfall charge is payable**

##### *Large-scale generation shortfall charge*

- (1) Large-scale generation shortfall charge for a year is payable:
- (a) if, on or before 14 February in the next year, the liable entity lodges a large-scale generation shortfall statement for that year—on that day; or
  - (b) if, after that day, the liable entity lodges a large-scale generation shortfall statement for that year—on the day on which the statement is lodged.

Note: For when large-scale generation shortfall charge is payable if the liable entity does not lodge a large-scale generation shortfall statement, see subsection 48(4).

##### *Small-scale technology shortfall charge*

- (2) Small-scale technology shortfall charge for a year is payable:
- (a) if, on or before 14 February in the next year, the liable entity lodges a small-scale technology shortfall statement for that year—on that day; or
  - (b) if, after that day, the liable entity lodges a small-scale technology shortfall statement for that year—on the day on which the statement is lodged.

Note: For when small-scale technology shortfall charge is payable if the liable entity does not lodge a small-scale technology shortfall statement, see subsection 48B(4).

#### **68 When penalty charge becomes due and payable**

Penalty charge becomes payable on the day specified for the purpose in the notice of assessment of that charge.



## **69 Extension of time for payment**

The Regulator may, in such circumstances as the Regulator thinks fit, extend the time for payment of an amount of a renewable energy shortfall charge related liability for such period as the Regulator determines, and, if the Regulator does so, the charge is payable accordingly.

## **70 Penalty for unpaid renewable energy shortfall charge or unpaid penalty charge**

### *Unpaid renewable energy shortfall charge*

- (1) If an amount (the ***unpaid amount***) of renewable energy shortfall charge which a liable entity is liable to pay is not paid by the time by which it is due to be paid, the liable entity is liable to pay, by way of penalty, interest charge on the whole of the unpaid amount for each day in the period that:
  - (a) started at the beginning of the day by which the amount of the renewable energy shortfall charge was due to be paid; and
  - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
    - (i) the renewable energy shortfall charge;
    - (ii) interest charge on any of the renewable energy shortfall charge.

### *Unpaid penalty charge*

- (2) If an amount (the ***unpaid amount***) of penalty charge which a liable entity is liable to pay is not paid by the time by which it is due to be paid, the liable entity is liable to pay, by way of penalty, interest charge on the whole of the unpaid amount for each day in the period that:
  - (a) started at the beginning of the day by which the amount of the penalty charge was due to be paid; and
  - (b) finishes at the end of the last day on which, at the end of the day, any of the following remains unpaid:
    - (i) the penalty charge;
    - (ii) interest charge on any of the penalty charge.

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*Amount of interest charge*

- (3) The amount of the interest charge for a day is worked out by multiplying the unpaid amount by the general interest charge rate for the day.

*When interest charge becomes due and payable*

- (4) The interest charge for a day is due and payable at the end of that day.

**71 Recovery of renewable energy shortfall charge related liability**

- (1) A renewable energy shortfall charge related liability that is payable:
  - (a) is a debt due to the Commonwealth; and
  - (b) payable to the Regulator in the manner and at the place prescribed.
- (2) The Regulator may sue in his or her official name in a court of competent jurisdiction to recover an amount of a renewable energy shortfall charge related liability that remains unpaid after it has become due and payable.

**72 Service of documents if a person is absent from Australia or cannot be found**

- (1) This section applies if a document needs to be served on a person in respect of a proceeding to recover an amount of a renewable energy shortfall charge related liability, and the Regulator, after making reasonable inquiries, is satisfied that:
  - (a) the person is absent from Australia and does not have any agent in Australia on whom the document can be served; or
  - (b) the person cannot be found.
- (2) The Regulator may, without the court's leave, serve the document by posting it, or a sealed copy of it, in a letter addressed to the person at any Australian address of the person (including the person's Australian place of business or residence) that is last known to the Regulator.

## **Division 2—Special rules about collection and recovery**

### **Subdivision A—Recovery from a third party**

#### **73 Regulator may collect amounts from third party**

*Amount recoverable under this Subdivision*

- (1) This Subdivision applies if any of the following amounts (the **debt**) is payable to the Commonwealth by a person (the **debtor**) (whether or not the debt has become due and payable):
- (a) an amount of a renewable energy shortfall charge related liability;
  - (b) a judgment debt for a renewable energy shortfall charge related liability;
  - (c) costs for such a judgment debt;
  - (d) an amount that a court has ordered the debtor to pay to the Regulator following the debtor's conviction for an offence against this Act, or following the making of a civil penalty order against the debtor.

*Regulator may give notice to a person*

- (2) The Regulator may give a written notice to a person (the **third party**) under this section if the third party owes or may later owe money to the debtor.

*Third party regarded as owing money in these circumstances*

- (3) The third party is taken to owe money (the **available money**) to the debtor if the third party:
- (a) is a person by whom the money is due or accruing to the debtor; or
  - (b) holds the money for, or on account of, the debtor; or
  - (c) holds the money on account of some other person for payment to the debtor; or
  - (d) has authority from some other person to pay the money to the debtor.

The third party is so taken to owe the money to the debtor even if:

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- (e) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and
- (f) the condition has not been fulfilled.

*How much is payable under the notice*

- (4) A notice under this section must:
  - (a) require the third party to pay to the Regulator the lesser of, or a specified amount not exceeding the lesser of:
    - (i) the debt; or
    - (ii) the available money; or
  - (b) if there will be amounts of the available money from time to time—require the third party to pay to the Regulator a specified amount, or a specified percentage, of each amount of the available money, until the debt is satisfied.

*When amount must be paid*

- (5) The notice must require the third party to pay an amount under paragraph (4)(a), or each amount under paragraph (4)(b):
  - (a) immediately after; or
  - (b) at or within a specified time after;the amount of the available money concerned becomes an amount owing to the debtor.

*Debtor must be notified*

- (6) The Regulator must send a copy of the notice to the debtor.

*Setting-off amounts*

- (7) If a person other than the third party has paid an amount to the Regulator that satisfies all or part of the debt:
  - (a) the Regulator must notify the third party of that fact; and
  - (b) any amount that the third party is required to pay under the notice is reduced by the amount so paid.

## **74 Notice to Commonwealth, State or Territory**

If the third party is the Commonwealth, a State or a Territory, the Regulator may give the notice to a person who:

- (a) is employed by the Commonwealth, or by the State or Territory (as appropriate); and
- (b) has the duty of disbursing public money under a law of the Commonwealth, or of the State or Territory (as appropriate).

## **75 Indemnity**

An amount that the third party pays to the Regulator under this Subdivision is taken to have been authorised by:

- (a) the debtor; and
- (b) any other person who is entitled to all or a part of the amount;

and the third party is indemnified for the payment.

## **76 Offence**

- (1) The third party must not fail to comply with the Regulator's notice.

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (2) The court may, in addition to imposing a penalty on a person convicted of an offence against subsection (1) in relation to failing to pay an amount under the notice, order the person to pay to the Regulator an amount not exceeding that amount.

## **Subdivision B—Recovery from liquidator**

### **77 Liquidator's obligation**

- (1) This Subdivision applies to a person who becomes a liquidator of a company that is, or has been, a liable entity.
- (2) Within 14 days after becoming liquidator, the liquidator must give written notice of that fact to the Regulator.

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- (3) The Regulator must, as soon as practicable, notify the liquidator of the amount (the ***notified amount***) that the Regulator considers is enough to discharge any outstanding renewable energy shortfall charge related liabilities that the company has when the notice is given.
- (4) The liquidator must not, without the Regulator's permission, part with any of the company's assets before receiving the Regulator's notice.
- (5) However, subsection (4) does not prevent the liquidator from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:
  - (a) the outstanding renewable energy shortfall charge related liabilities;
  - (b) any debts of the company which:
    - (i) are unsecured; and
    - (ii) are not required, by an Australian law, to be paid in priority to some or all of the other debts of the company.
- (6) After receiving the Regulator's notice, the liquidator must set aside, out of the assets available for paying amounts covered by paragraph (5)(a) or (b) (the ***ordinary debts***), assets with a value calculated using the formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left[ \frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right]$$

where:

***amount of remaining ordinary debts*** means the sum of the company's ordinary debts other than the outstanding renewable energy shortfall charge related liabilities.

- (7) The liquidator must, in his or her capacity as liquidator, discharge the outstanding renewable energy shortfall charge related liabilities, to the extent of the value of the assets that the liquidator is required to set aside.

- (8) The liquidator is personally liable to discharge the liabilities, to the extent of that value, if the liquidator contravenes this section.

## 78 Offence

The liquidator must not fail to comply with subsection 77(2), (4), (6) or (7).

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

## 79 Joint liability of 2 or more liquidators

If there are 2 or more persons who become liquidators of the company, the obligations and liabilities under this Subdivision:

- (a) apply to all the liquidators; but
- (b) may be discharged by any of them.

## 80 Liquidator's other obligation or liability

This Subdivision does not reduce any obligation or liability of a liquidator arising elsewhere.

## Subdivision C—Recovery from receiver

### 81 Receiver's obligation

- (1) This Subdivision applies if:
  - (a) a person (the **receiver**), in the capacity of receiver, or of receiver and manager, takes possession of a company's assets for the company's debenture holders; and
  - (b) the company is, or has been, a liable entity.
- (2) Within 14 days after taking possession of the assets, the receiver must give written notice of that fact to the Regulator.
- (3) The Regulator must, as soon as practicable, notify the receiver of the amount (the **notified amount**) that the Regulator considers is enough to discharge any outstanding renewable energy shortfall

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charge related liabilities that the company has when the notice is given.

- (4) The receiver must not, without the Regulator's permission, part with any of the company's assets before receiving the Regulator's notice.
- (5) However, subsection (4) does not prevent the receiver from parting with the company's assets to pay debts of the company not covered by either of the following paragraphs:
- (a) the outstanding renewable energy shortfall charge related liabilities;
  - (b) any debts of the company which:
    - (i) are unsecured; and
    - (ii) are not required, by an Australian law, to be paid in priority to some or all of the other debts of the company.
- (6) After receiving the Regulator's notice, the receiver must set aside, out of the assets available for paying amounts covered by paragraph (5)(a) or (b) (the **ordinary debts**), assets with a value calculated using the formula:

$$\text{Total value of assets available to pay ordinary debts} \times \left[ \frac{\text{Notified amount}}{\text{Notified amount} + \text{Amount of remaining ordinary debts}} \right]$$

where:

**amount of remaining ordinary debts** means the sum of the company's ordinary debts other than the outstanding renewable energy shortfall charge related liabilities.

- (7) The receiver must, in his or her capacity as receiver, or as receiver and manager, discharge the outstanding renewable energy shortfall charge related liabilities, to the extent of the value of the assets that the receiver is required to set aside.
- (8) The receiver is personally liable to discharge the liabilities, to the extent of that value, if the receiver contravenes this section.



## 82 Offence

The receiver must not fail to comply with subsection 81(2), (4), (6) or (7).

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

## 83 Joint liability of 2 or more receivers

If 2 or more persons (the *receivers*) take possession of a company's assets, for the company's debenture holders, in the capacity of receiver, or of receiver and manager, the obligations and liabilities under this Subdivision apply to:

- (a) all the receivers; but
- (b) may be discharged by any of them.

## 84 Receiver's other obligation or liability

This Subdivision does not reduce any obligation or liability of the receiver or receivers arising elsewhere.

## Subdivision D—Recovery from agent winding up business for non-resident principal

### 85 Obligation of agent winding up business for non-resident principal

- (1) This Subdivision applies to an agent whose principal:
  - (a) is not an Australian resident; and
  - (b) has instructed the agent to wind up so much of the principal's business as is carried on in Australia; and
  - (c) is, or has been, a liable entity.
- (2) Within 14 days after receiving the instructions, the agent must give written notice of that fact to the Regulator.
- (3) The Regulator must, as soon as practicable after receiving the notice, notify the agent of the amount (the *notified amount*) that

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the Regulator considers is enough to discharge any outstanding renewable energy shortfall charge related liabilities that the principal has when the notice is given.

- (4) Before receiving the Regulator's notice, the agent must not, without the Regulator's permission, part with any of the principal's assets that are available for discharging the outstanding renewable energy shortfall charge related liabilities.
- (5) After receiving the notice, the agent must set aside:
  - (a) out of the assets available for discharging the outstanding renewable energy shortfall charge related liabilities, assets to the value of the notified amount; or
  - (b) all of the assets so available, if their value is less than the notified amount.
- (6) The agent must, in that capacity, discharge the outstanding renewable energy shortfall charge related liabilities, to the extent of the value of the assets that the agent is required to set aside.
- (7) The agent is personally liable to discharge the liabilities, to the extent of that value, if the agent contravenes this section.

## **86 Offence**

A person must not fail to comply with subsection 85(2), (4), (5) or (6).

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See section 4AA of the *Crimes Act 1914* for the current value of penalty units.

## **87 Joint liability of 2 or more agents**

If 2 or more agents are jointly instructed by the principal to wind up the business, the obligations and liabilities under this

Subdivision:

- (a) apply to all the agents; but
- (b) may be discharged by any of them.

## **88 Agent's other obligation or liability**

This Subdivision does not reduce any obligation or liability of the agent or agents arising elsewhere.

## **Subdivision E—Recovery from deceased person's estate**

### **89 Administered estate**

- (1) This section applies if:
  - (a) a person has an outstanding renewable energy shortfall charge related liability when the person dies; and
  - (b) either of the following is granted after the death:
    - (i) probate of the person's will;
    - (ii) letters of administration of the person's estate.
- (2) The Regulator may, in respect of the liability, deal with the trustee of the deceased person's estate as if:
  - (a) the deceased person were still alive; and
  - (b) the trustee were the deceased person.
- (3) Without limiting subsection (2), the trustee must:
  - (a) provide any statement and other information that the deceased person was liable to provide, or would have been liable to provide if he or she were still alive; and
  - (b) provide any other information relating to the liability that the Regulator requires; and
  - (c) in the trustee's representative capacity, discharge the liability and any penalty imposed in respect of the liability under this Act for which the deceased person would be liable if he or she were still alive.
- (4) If:
  - (a) the amount of the liability requires an assessment under this Act but the assessment has not been made; and
  - (b) the trustee fails to provide a statement or other information in relation to assessing that amount as required by the Regulator;the Regulator may assess that amount. If the Regulator does so, the assessment has the same effect as if it were made under this Act.

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- (5) A trustee who is dissatisfied with an assessment under subsection (4) may object in the manner set out in Division 1 of Part 6.
- (6) Division 1 of Part 6 applies in relation to the objection as if the trustee were the deceased person.

**90 Unadministered estate**

- (1) This section applies if neither of the following is granted within 6 months after a person's death:
  - (a) probate of the person's will;
  - (b) letters of administration of the person's estate.
- (2) The Regulator may determine the total amount of outstanding renewable energy shortfall charge related liabilities that the person had at the time of death.
- (3) The Regulator must publish notice of the determination twice in a daily newspaper circulating in the State or Territory in which the person resided at the time of death.
- (4) A notice of the determination is conclusive evidence of the outstanding renewable energy shortfall charge related liabilities, unless the determination is amended.
- (5) A person who is dissatisfied with the determination may object in the manner set out in Division 1 of Part 6 if the person:
  - (a) claims an interest in the estate; or
  - (b) is granted probate of the deceased person's will or letters of administration of the estate.
- (6) Division 1 of Part 6 applies in relation to the objection as if the person making it were the deceased person.

## **Division 3—Other matters**

### **91 What this Division is about**

This Division deals with a person's right to recover from another person an amount paid in discharge of a renewable energy shortfall charge related liability if:

- the person has paid the amount for or on behalf of the other person; or
- the persons are jointly liable to pay the amount.

### **92 Right of recovery if another person is liable**

A person who has paid an amount of a renewable energy shortfall charge related liability for or on behalf of another person may:

- (a) recover that amount from the other person as a debt (together with the costs of recovery) in a court of competent jurisdiction; or
- (b) retain or deduct the amount out of money held by the person that belongs to, or is payable to, the other person.

### **93 Right of contribution if persons are jointly liable**

- (1) If 2 or more persons are jointly liable to pay an amount of a renewable energy shortfall charge related liability, they are each liable for the whole of the amount.
- (2) If one of the persons has paid an amount of the liability, the person may recover in a court of competent jurisdiction, as a debt, from another of those persons:
  - (a) an amount equal to so much of the amount paid; and
  - (b) an amount equal to so much of the costs of recovery under this section;as the court considers just and equitable.

**94 Regulator may authorise amount to be recovered**

- (1) The Regulator may, in writing, authorise a person (the *authorised person*) to recover:
  - (a) the total amount of the outstanding renewable energy shortfall charge related liabilities of a deceased person as determined under section 90 (about unadministered estates); and
  - (b) any reasonable costs incurred by the authorised person in recovering that amount;by seizing and disposing of any property of the deceased person.
- (2) The authorised person may seize and dispose of the property as prescribed by the regulations.

## **Part 8—Refunding large-scale generation shortfall charge**

### **95 Refunding large-scale generation shortfall charge in later years**

- (1) This Part applies where:
  - (a) a liable entity has paid large-scale generation shortfall charge for a year (the ***charge year***); and
  - (b) during the allowable refund period, the liable entity surrenders large-scale generation certificates under this section.
- (2) The ***allowable refund period*** starts immediately after the liable entity lodges the liable entity's large-scale generation shortfall statement for the year after the charge year and ends 3 years after the liable entity paid the large-scale generation shortfall charge.
- (3) The liable entity must specify the charge year in respect of which the large-scale generation certificates are being surrendered.

### **96 Value of certificates surrendered**

- (1) The ***certificate value*** for a large-scale generation certificate surrendered under section 95 is equal to the large-scale generation shortfall charge payable in respect of 1 MWh in the charge year specified under subsection 95(3).
- (2) The total of the certificate values of large-scale generation certificates surrendered by a liable entity under section 95 in respect of a year must not exceed the amount of large-scale generation shortfall charge paid by the liable entity for that year.

### **97 Certificates can only be surrendered if there is no shortfall**

A liable entity may only surrender large-scale generation certificates under section 95 if, in the year immediately prior to the year in which the certificates are to be surrendered, the liable entity did not have a large-scale generation shortfall.

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**98 Refund of charge where certificates surrendered**

If a liable entity surrenders large-scale generation certificates under section 95, the Regulator must pay the liable entity the amount worked out using the formula:

Certificate value — Administration fee

where:

*administration fee* is the amount worked out under the regulations.



## Part 9—Penalty charge

### 99 Penalty charge for failure to provide statements or information relevant to large-scale generation shortfall charge

- (1) A liable entity, other than a government body, is liable to pay, by way of penalty, penalty charge if the liable entity refuses or fails to provide, when and as required under this Act any of the following for a year (the *assessment year*):
- (a) an energy acquisition statement for the assessment year;
  - (b) a large-scale generation shortfall statement for the assessment year;
  - (c) information relevant to assessing the liable entity's liability to pay large-scale generation shortfall charge for the assessment year.

Note: If the liable entity refuses or fails to lodge an energy acquisition statement, the liable entity is also liable to penalty charge under section 99A.

- (2) A liable entity is liable to pay, by way of penalty, penalty charge if:
- (a) the liable entity is liable to pay large-scale generation shortfall charge for a year (the *assessment year*); and
  - (b) the liable entity fails to keep a record in relation to the assessment year containing details of the basis of calculation of the following amounts that were specified in the liable entity's energy acquisition statement for the assessment year:
    - (i) the amount of electricity acquired under relevant acquisitions during the assessment year;
    - (ii) the value, in MWh, of large-scale generation certificates surrendered for the assessment year;
    - (iii) any carried forward shortfall or carried forward surplus for the previous year;
    - (iv) any carried forward surplus for the assessment year.
- (3) A liable entity is liable to pay, by way of penalty, penalty charge if:
- (a) the liable entity is liable to pay large-scale generation shortfall charge for a year (the *assessment year*); and

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- (b) the liable entity refuses or fails to produce to the Regulator, when and as required by the Regulator under this Act, a document containing details of the basis of calculation of the amounts referred to in paragraph (2)(b) that were specified in an energy acquisition statement for the assessment year.
- (4) Subject to subsection (5), the penalty charge payable under subsection (1), (2) or (3) is equal to double the amount of large-scale generation shortfall charge payable by the entity for the assessment year.
- (5) If a liable entity has already become liable to penalty charge under this section because of a particular refusal or failure that relates to a year, the liable entity is not liable to any further amount of penalty charge under this section because of any other refusal or failure that relates to the same year.

**99A Penalty charge for failure to provide statements or information relevant to small-scale technology shortfall charge**

- (1) A liable entity, other than a government body, is liable to pay, by way of penalty, penalty charge if the liable entity refuses or fails to provide, when and as required under this Act any of the following for a year (the *assessment year*):
    - (a) an energy acquisition statement for the assessment year;
    - (b) a small-scale technology shortfall statement for the assessment year;
    - (c) information relevant to assessing the liable entity's liability to pay small-scale technology shortfall charge for the assessment year.
- Note: If the liable entity refuses or fails to lodge an energy acquisition statement, the liable entity is also liable to penalty charge under section 99.
- (2) A liable entity is liable to pay, by way of penalty, penalty charge if:
    - (a) the liable entity is liable to pay small-scale technology shortfall charge for a year (the *assessment year*); and
    - (b) the liable entity fails to keep a record in relation to the assessment year containing details of the basis of calculation of the following amounts that were specified in the liable entity's energy acquisition statement for the assessment year:

- (i) the amount of electricity acquired under relevant acquisitions during the assessment year;
  - (ii) the value, in MWh, of small-scale technology certificates surrendered for the quarters of the assessment year.
- (3) A liable entity is liable to pay, by way of penalty, penalty charge if:
  - (a) the liable entity is liable to pay small-scale technology shortfall charge for a year (the *assessment year*); and
  - (b) the liable entity refuses or fails to produce to the Regulator, when and as required by the Regulator under this Act, a document containing details of the basis of calculation of the amounts referred to in paragraph (2)(b) that were specified in an energy acquisition statement for the assessment year.
- (4) Subject to subsection (5), the penalty charge payable under subsection (1), (2) or (3) is equal to double the amount of small-scale technology shortfall charge payable by the entity for the assessment year.
- (5) If a liable entity has already become liable to penalty charge under this section because of a particular refusal or failure that relates to a year, the liable entity is not liable to any further amount of penalty charge under this section because of any other refusal or failure that relates to the same year.

## **100 False or misleading statements**

- (1) If:
  - (a) a liable entity other than a government body:
    - (i) makes a statement that is false or misleading in a material particular to a person for a purpose connected with this Act; or
    - (ii) omits from a statement made to a person for a purpose connected with this Act anything without which the statement is misleading in a material particular; and

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- (b) the renewable energy shortfall charge properly payable by the liable entity exceeds the renewable energy shortfall charge that would have been payable by the liable entity if it were assessed on the basis that the statement were not false or misleading;  
the liable entity is liable to pay, by way of penalty, penalty charge equal to double the amount of the excess referred to in paragraph (b).
- (2) A reference in this section to a statement made to a person for a purpose connected with this Act is a reference to a statement made orally, in writing, in a data processing device or in any other form and, for example, includes a statement:
  - (a) made in an objection, statement or other document lodged with, given to or prepared for the person; and
  - (b) made in answer to a question asked by the person; and
  - (c) made in any information provided to the person.

**101 Penalty charge where arrangement to avoid renewable energy shortfall charge**

If, under section 41, a liable entity is liable to pay an amount of renewable energy shortfall charge (the *amount payable*) that is greater than the amount that would have been payable if section 41 had not applied to the liable entity (the *notional amount*), the liable entity is also liable to pay, by way of penalty, penalty charge worked out using the formula:

$$2 \times \left[ \text{Amount payable} - \text{Notional amount} \right]$$

**102 Assessment of penalty charge**

- (1) The Regulator must make an assessment of the penalty charge payable by a liable entity under this Part and must, as soon as practicable after the assessment is made, give written notice of the assessment to the liable entity.
- (2) Nothing in this Act is taken to prevent a notice from being incorporated in a notice of any other assessment made in relation to the liable entity under this Act.

**103 Remitting penalty charge**

The Regulator may remit all or part of the penalty charge payable by a liable entity under this Part, but, for the purposes of applying subsection 33(1) of the *Acts Interpretation Act 1901* to the power of remission conferred by this section, nothing in this Act is taken to prevent the exercise of the power at a time before an assessment is made of the penalty charge.

## **Part 10—Administration**

### **104 General administration of Act**

The Regulator has the general administration of this Act.

### **105 Annual report**

After the end of each year, the Regulator must give the Minister a report on the working of this Act during the year for presentation to the Parliament.

## **Part 11—Audit**

### **Division 1—Overview**

#### **106 Overview of Part**

This Part provides a regime for the audit of the affairs of registered persons and liable entities in so far as they relate to this Act.

Division 2 provides for the appointment of authorised officers to undertake audit functions and for the issue of identification for such persons.

Division 3 sets out the powers of authorised officers and Division 4 sets out the obligations imposed on authorised officers in the exercise of those powers.

Division 5 deals with an occupier's rights and responsibilities in circumstances where an authorised officer seeks to exercise audit powers.

Division 6 deals with the procedure for obtaining, and the nature of, monitoring warrants.

## **Division 2—Appointment of authorised officers and identity cards**

### **107 Appointment of authorised officers**

- (1) The Regulator may, in writing, appoint a member of the staff of the Regulator to be an authorised officer for the purposes of this Part.
- (1A) The Regulator may, in writing, also appoint any of the following persons to be an authorised officer for the purposes of this Part:
  - (a) any other person who is appointed or employed by the Commonwealth;
  - (b) a person who is appointed or employed by a State or a Territory.
- (2) The Regulator is not to appoint a person as an authorised officer unless the Regulator is satisfied that the person is of sufficient maturity, and has had sufficient training, to properly exercise the powers of an authorised officer.
- (3) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the Regulator.

### **108 Identity cards**

- (1) The Regulator must issue an identity card to an authorised officer in the form prescribed by the regulations. The identity card must contain a recent photograph of the authorised officer.
- (2) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

### **109 Offences related to identity cards**

A person is guilty of an offence if:

- (a) the person has been issued with an identity card; and
- (b) the person ceases to be an authorised officer; and



- (c) the person does not, immediately after so ceasing, return the identity card to the Regulator.

Penalty: 1 penalty unit.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Division 3—Powers of authorised officer**

### **Subdivision A—Monitoring powers**

#### **110 Entry to premises**

- (1) For the purposes of substantiating information provided under this Act or the regulations or of determining whether this Act or the regulations have been complied with, an authorised officer may:
  - (a) enter any premises at any reasonable time of the day; and
  - (b) exercise the monitoring powers set out in section 111.
- (2) An authorised officer is not authorised to enter premises under subsection (1) unless:
  - (a) the premises are business premises, the occupier of the premises has consented to the entry and the officer has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a monitoring warrant.
- (3) If an authorised officer is on the premises with the consent of the occupier, the authorised officer must leave the premises if the occupier asks the authorised officer to do so.

#### **111 Monitoring powers of authorised officers**

- (1) For the purposes of this Part, the following are the monitoring powers that an authorised officer may exercise in relation to premises under section 110:
  - (a) the power to search the premises for any thing on the premises that may relate to the creation or transfer of certificates or relevant acquisitions of electricity;
  - (b) the power to examine any activity conducted on the premises that may relate to information provided for the purposes of this Act or the regulations;
  - (c) the power to examine any thing on the premises that may relate to information provided for the purposes of this Act or the regulations;
  - (d) the power to take photographs or make video or audio recordings or sketches on the premises of any such activity or thing;

- (e) the power to inspect any document on the premises that may relate to information provided for the purposes of this Act or the regulations;
  - (f) the power to take extracts from, or make copies of, any such document;
  - (g) the power to take onto the premises such equipment and materials as the authorised officer requires for the purpose of exercising powers in relation to the premises;
  - (h) the power to secure a thing that:
    - (i) is found during the exercise of monitoring powers on the premises; and
    - (ii) an authorised officer believes on reasonable grounds affords evidence of the commission of an offence against this Act or the *Crimes Act 1914*, or of the contravention of a civil penalty provision; and
    - (iii) the authorised officer believes on reasonable grounds would be lost, destroyed or tampered with before a warrant can be obtained;until a warrant is obtained to seize the thing;
  - (i) the powers in subsections (2) and (3).
- (2) For the purposes of this Part, ***monitoring powers*** include the power to operate equipment at premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is at the premises; and
    - (ii) can be used with the equipment or is associated with it;contains information that is relevant to substantiating information provided under this Act or the regulations.
- (3) For the purposes of this Part, ***monitoring powers*** include the following powers in relation to information described in subsection (2) found in the exercise of the power under that subsection:
- (a) the power to operate facilities at the premises to put the information in documentary form and copy the documents so produced;
  - (b) the power to operate facilities at the premises to transfer the information to a disk, tape or other storage device that:

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- (i) is brought to the premises for the exercise of the power;  
or
- (ii) is at the premises and the use of which for the purpose has been agreed in writing by the occupier of the premises;
- (c) the power to remove from the premises a disk, tape or other storage device to which the information has been transferred in exercise of the power under paragraph (b).

**Subdivision B—Power of authorised officer to ask questions and seek production in certain circumstances**

**112 Authorised officer may request or require persons to answer questions etc.**

*Requesting*

- (1) If the authorised officer was only authorised to enter premises because the occupier of the premises consented to the entry—the authorised officer may request the occupier to:
  - (a) answer any questions related to the creation or transfer of certificates, relevant acquisitions of electricity or the provision of information under this Act or the regulations that are put by the authorised officer; and
  - (b) produce any document requested by the authorised officer that is so related.

*Requiring*

- (2) If the authorised officer was authorised to enter the premises by a monitoring warrant—the authorised officer has power to require any person in or on the premises to:
  - (a) answer any questions related to the creation or transfer of certificates, relevant acquisitions of electricity or the provision of information under this Act or the regulations that are put by the authorised officer; and
  - (b) produce any document requested by the authorised officer that is so related.

### **113 Failure to provide information to authorised officer**

- (1) A person is guilty of an offence if the person refuses or fails to comply with a requirement under subsection 112(2).

Penalty: Imprisonment for 6 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) A person is excused from complying with a requirement of subsection 112(2) if the answer to the question or the production of the document might tend to incriminate the person or expose the person to a penalty.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

## **Division 4—Obligations and incidental powers of authorised officers**

### **116 Authorised officer must produce identity card on request**

An authorised officer is not entitled to exercise any powers under this Part in relation to premises if:

- (a) the occupier of the premises requires the authorised officer to produce his or her identity card for inspection by the occupier; and
- (b) the authorised officer fails to comply with the requirement.

### **117 Consent**

- (1) Before obtaining the consent of a person for the purposes of paragraph 110(2)(a), the authorised officer must inform the person that he or she may refuse consent.
- (2) An entry of an authorised officer by virtue of the consent of a person is not lawful unless the person voluntarily consented to the entry.

### **118 Announcement before entry**

An authorised officer executing a monitoring warrant must, before entering premises under the warrant:

- (a) announce that he or she is authorised to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises.

### **119 Details of monitoring warrant to be given to occupier etc. before entry**

- (1) If a monitoring warrant is being executed and the occupier of the warrant premises or another person who apparently represents the occupier is present at the premises, the authorised officer must make available to that person a copy of the warrant.

- (2) The authorised officer must identify himself or herself to that person.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

Note: Monitoring warrants are issued under section 125.

## **120 Use of electronic equipment in exercising monitoring powers**

- (1) An authorised officer or a person assisting that officer may operate electronic equipment already at premises in order to exercise monitoring powers if he or she believes, on reasonable grounds, that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the authorised officer or a person assisting that officer believes, on reasonable grounds, that:
  - (a) there is on the premises material relating to information supplied under this Act or the regulations that may be accessible by operating electronic equipment on the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard, or otherwise.
- (3) The authorised officer or a person assisting that officer must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (4) The equipment may be secured:
  - (a) for a period not exceeding 24 hours; or
  - (b) until the equipment has been operated by the expert;whichever first happens.
- (5) If an authorised officer or a person assisting that officer believes, on reasonable grounds, that the expert assistance will not be available within 24 hours, he or she may apply to a magistrate for an extension of the period.

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- (6) The authorised officer or a person assisting that officer must give notice to the occupier of the premises of his or her intention to apply for an extension and the occupier is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
- (8) In this section:  
*premises* means:
  - (a) premises that an authorised officer has entered, and remains on, with the consent of the occupier; and
  - (b) warrant premises.

**121 Compensation for damage to electronic equipment**

- (1) If:
  - (a) damage is caused to equipment as a result of it being operated as mentioned in section 120; and
  - (b) the damage was caused as a result of:
    - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care being exercised by the person operating the equipment;compensation for the damage is payable to the owner of the equipment.
- (2) The Regulator must pay the owner such reasonable compensation as the owner and the Regulator agree on. If the Regulator and the owner fail to agree, the owner may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (3) Compensation is payable out of money appropriated by the Parliament.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.



## **Division 5—Occupier's rights and responsibilities**

### **122 Occupier entitled to be present during execution of monitoring warrant**

- (1) If a monitoring warrant is being executed and the occupier of the warrant premises, or another person who apparently represents the occupier, is present at the premises, the person is entitled to observe the execution of the warrant.
- (2) The right to observe the execution of the warrant ceases if the person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### **123 Occupier to provide authorised officer with all facilities and assistance**

The occupier of warrant premises, or another person who apparently represents the occupier, must provide the officer executing the warrant and any person assisting that officer with all reasonable facilities and assistance for the effective exercise of their powers.

### **124 Offences related to warrants**

A person is guilty of an offence if the person fails to comply with the obligation set out in section 123.

Penalty: 10 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Division 6—Warrants**

### **125 Monitoring warrants**

- (1) An authorised officer may apply to a magistrate for a warrant under this section in relation to premises.
- (2) Subject to subsection (3), the magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that it is reasonably necessary that one or more authorised officers should have access to the premises for the purposes of substantiating information provided under this Act or the regulations or of determining whether this Act or the regulations have been complied with.
- (3) The magistrate must not issue the warrant unless the authorised officer or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
  - (a) authorise one or more authorised officers (whether or not named in the warrant), with such assistance and by such force as is necessary and reasonable:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in section 111 in relation to the premises; and
  - (b) state whether the entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (c) specify the day (not more than 6 months after the issue of the warrant) on which the warrant ceases to have effect; and
  - (d) state the purpose for which the warrant is issued.

## Part 11A—Information-gathering powers

### 125A Regulator may obtain information and documents

- (1) This section applies to a person if the Regulator has reason to believe that the person:
  - (a) has information or a document that is relevant to the operation of this Act; or
  - (b) is capable of giving evidence which the Regulator has reason to believe is relevant to the operation of this Act.
- (2) The Regulator may, by written notice given to the person, require the person:
  - (a) to give to the Regulator, within the period and in the manner and form specified in the notice, any such information; or
  - (b) to produce to the Regulator, within the period and in the manner specified in the notice, any such documents; or
  - (c) if the person is an individual—to appear before the Regulator at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents; or
  - (d) if the person is a body corporate—to cause a competent officer of the body to appear before the Regulator at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents.
- (3) A notice under subsection (2) must set out the effect of:
  - (a) subsection (4); and
  - (b) section 125E; and
  - (c) sections 137.1 and 137.2 of the *Criminal Code*.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for giving false or misleading information or documents.
- (4) A person commits an offence if:
  - (a) the person is given a notice under this section; and
  - (b) the person fails to comply with the notice.

Penalty for contravention of this subsection: 20 penalty units.

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**125B Self-incrimination**

- (1) An individual is not excused from giving information or evidence or producing a document under this Part on the ground that the information or evidence or the production of the document might tend to incriminate the individual or expose the individual to a penalty.
- (2) However:
  - (a) the information or evidence given or the document produced;  
or
  - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or evidence or producing the document;is not admissible in evidence against the individual in criminal proceedings, or proceedings for a civil penalty order, other than:
  - (c) proceedings for an offence against subsection 125A(4) or section 125E; or
  - (d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) that relates to this Part.

**125C Copies of documents**

The Regulator may inspect a document produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.

**125D Regulator may retain documents**

- (1) The Regulator may take, and retain for as long as is necessary, possession of a document produced under this Part.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the Regulator to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the Regulator must, at such times and places as the Regulator thinks appropriate, permit the person otherwise entitled to possession of the document, or a person

authorised by that person, to inspect and make copies of, or take extracts from, the document.

**125E False or misleading evidence**

A person commits an offence if:

- (a) the person gives evidence to another person; and
- (b) the person does so knowing that the evidence is false or misleading in a material particular; and
- (c) the evidence is given in compliance or purported compliance with section 125A.

Penalty: Imprisonment for 12 months.

## Part 12—Publication of information

### 134 Regulator may publish certain information

*Information relating to large-scale generation shortfall charge*

- (1) The Regulator may publish:
- (a) a list of each liable entity that has a large-scale generation shortfall for a particular year; and
  - (b) both of the following:
    - (i) the amount of each liable entity's large-scale generation shortfall for that year;
    - (ii) the proportion of that shortfall relative to the liable entity's required large-scale renewable energy for that year; and
  - (c) the total of the large-scale generation shortfalls for that year.

*Information relating to small-scale technology shortfall charge*

- (2) The Regulator may publish:
- (a) a list of each liable entity that has a small-scale technology shortfall for a particular year; and
  - (b) the amount of each liable entity's small-scale technology shortfall for that year; and
  - (c) the total of the small-scale technology shortfalls for that year.

## **Part 13—Registers**

### **Division 1—General**

#### **135 Registers to be maintained**

The Regulator must maintain the following registers:

- (a) the register of registered persons;
- (b) the register of accredited power stations;
- (c) the register of large-scale generation certificates;
- (ca) the register of small-scale technology certificates;
- (d) the register of applications for accredited power stations.

## **Division 2—The register of registered persons**

### **136 Contents of register of registered persons**

- (1) The register of registered persons is to contain:
  - (a) the name of each registered person; and
  - (b) the registration number for each person; and
  - (c) any other information that the Regulator considers appropriate.
- (2) The register must also contain the following information about any person whose registration is suspended:
  - (a) the name of the person;
  - (b) the person's registration number;
  - (c) the period for which the registration is suspended;
  - (d) any other information that the Regulator considers appropriate.

### **137 Form of register**

- (1) The register must be maintained by electronic means.
- (2) The register is to be made available for inspection on the internet.



## **Division 3—The register of accredited power stations**

### **138 Contents of register of accredited power stations**

The register of accredited power stations is to contain:

- (a) the name of each accredited power station; and
- (b) the name of the nominated person for the accredited power station; and
- (c) the identification code for each accredited power station; and
- (ca) the 1997 eligible renewable power baseline for each power station (including any variation of that baseline under section 30F); and
- (cb) for each power station for which there is a 2008 WCMG limit—the limit (including any variation of that limit under section 30G); and
- (d) any other information that the Regulator considers appropriate.

### **139 Form of register**

- (1) The register must be maintained by electronic means.
- (2) The register is to be made available for inspection on the internet.

## **Division 4—The register of large-scale generation certificates**

### **140 Contents of register of large-scale generation certificates**

The register of large-scale generation certificates is to contain:

- (a) the unique identification code of each valid large-scale generation certificate; and
- (b) the year in which the certificate was created; and
- (c) the name of the person who created the certificate; and
- (d) the name of the current registered owner, and each previous registered owner, of each certificate; and
- (da) the eligible energy source or sources in respect of which the certificate was created; and
- (e) any other information that the Regulator considers appropriate.

### **141 Form of register**

- (1) The register must be maintained by electronic means.
- (2) The register is to be made available for inspection on the internet.
- (3) The Regulator must ensure that the register is kept up-to-date.

## **Division 4A—The register of small-scale technology certificates**

### **141AA Contents of register of small-scale technology certificates**

The register of small-scale technology certificates is to contain:

- (a) the unique identification code of each valid small-scale technology certificate; and
- (b) the year in which the certificate was created; and
- (c) if the certificate was created otherwise than by the Regulator under section 30P:
  - (i) the name of the person who created the certificate; and
  - (ii) a statement that the certificate was created in relation to a solar water heater other than an air source heat pump water heater, or that it was created in relation to an air source heat pump water heater, or that it was created in relation to a small generation unit (as appropriate); and
- (d) if the certificate was created by the Regulator under section 30P—a statement to that effect; and
- (e) the name of the current registered owner, and each previous registered owner, of each certificate; and
- (f) any other information that the Regulator considers appropriate.

### **141AB Form of register**

- (1) The register must be maintained by electronic means.
- (2) The register is to be made available for inspection on the internet.
- (3) The Regulator must ensure that the register is kept up-to-date.

**Division 5—The register of applications for accredited power stations**

**141A Contents of register of applications for accredited power stations**

The register of applications for accredited power stations is to contain:

- (a) the name of each applicant for an accredited power station; and
- (b) the location of the power station; and
- (c) the eligible energy source or sources proposed to be used by the power station; and
- (d) any other information that the Regulator considers appropriate.

**141B Form of register**

- (1) The register must be maintained by electronic means.
- (2) The register is to be made available for inspection on the internet.

## Part 15—Offences for failure to provide documents

### 154 Failure to provide documents

- (1) A person is guilty of an offence if:
- (a) the person is required under this Act (other than section 46D) or the regulations to provide a document (including a statement or return) to the Regulator or to another person within a specified time or by a specified date; and
  - (b) the person does not provide the document by the specified time or the specified date (as the case requires).

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility and Chapter 3 of the *Criminal Code* contains general principles relating to penalties.

Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) A person is guilty of an offence if:
- (a) the person is required under this Act (other than section 46D) or the regulations to provide a document (including a statement or return) to the Regulator or to another person within a specified time or by a specified date; and
  - (b) the person does not provide the document by the specified time or the specified date (as the case requires).

Penalty: 6 months imprisonment.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part 15A—Civil penalties**

### **Division 1—Civil penalty orders**

#### **154A Definitions**

- (1) In this Division:

***Court*** means:

- (a) the Federal Court; or
- (b) the Federal Magistrates Court; or
- (c) the Supreme Court of a State or Territory; or
- (d) a District Court or County Court of a State.

***penalty unit*** has the meaning given by section 4AA of the *Crimes Act 1914*.

- (2) The jurisdiction conferred by this Division on the Supreme Court of a Territory is conferred to the extent that the Constitution permits.

#### **154B Civil penalty orders**

*Court may make civil penalty order*

- (1) If a Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay the Commonwealth a pecuniary penalty.
- (2) An order under subsection (1) is to be known as a ***civil penalty order***.

*Amount of penalty for contravention of subsection 24A(1)*

- (3) The pecuniary penalty for a contravention by an individual of subsection 24A(1) must not be more than the greater of:
- (a) 1 penalty unit for each renewable energy certificate to which the contravention relates, up to a maximum of 10,000 penalty units; and
  - (b) 100 penalty units.

- (4) The pecuniary penalty for a contravention by a body corporate of subsection 24A(1) must not be more than the greater of:
- (a) 5 penalty units for each renewable energy certificate to which the contravention relates, up to a maximum of 50,000 penalty units; and
  - (b) 500 penalty units.

*Amount of penalty for contravention of subsection 154N(1)*

- (5) The pecuniary penalty for a contravention, by an executive officer of a body corporate, of subsection 154N(1) must not be more than the maximum pecuniary penalty that could be imposed on the officer under this section if the officer had committed the contravention referred to in paragraph 154N(1)(a).

*Amount of penalty for contravention of any other civil penalty provision*

- (6) The pecuniary penalty for a contravention by a person of a civil penalty provision, other than subsection 24A(1) or 154N(1), must not be more than:
- (a) if the person is an individual—100 penalty units; or
  - (b) if the person is a body corporate—500 penalty units.

*Matters to be taken into account by Court in determining amount of penalty*

- (7) In determining the pecuniary penalty, in accordance with this section, for a contravention by a person of a civil penalty provision, the Court may have regard to all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct; and
  - (e) the extent to which the person has cooperated with the authorities; and
  - (f) if the person is a body corporate:

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- (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
- (ii) whether the body corporate exercised due diligence to avoid the contravention; and
- (iii) whether the body corporate had a corporate culture conducive to compliance; and
- (g) if the contravention is of subsection 24A(1)—whether the person has surrendered any renewable energy certificates under section 28A to compensate for the contravention.

*Civil enforcement of penalty*

- (8) A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

**154C Who may apply for a civil penalty order**

- (1) Only the Regulator may apply for a civil penalty order.
- (2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

**154D Two or more proceedings may be heard together**

The Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

**154E Time limit for application for an order**

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

**154F Civil evidence and procedure rules for civil penalty orders**

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.



### **154G Civil proceedings after criminal proceedings**

The Court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

### **154H Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

### **154J Criminal proceedings after civil proceedings**

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

### **154K Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings**

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

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However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

**154L Mistake of fact**

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

**154M State of mind**

*Scope*

- (1) This section applies to proceedings for a civil penalty order against a person for a contravention of any of the following civil penalty provisions:
  - (a) subsection 24A(1);
  - (b) subsection 24B(1).

*State of mind*

- (2) In the proceedings, it is not necessary to prove:
  - (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (3) Subsection (2) does not affect the operation of section 154L.

## **Division 2—Liability of executive officers of bodies corporate**

### **154N Civil penalties for executive officers of bodies corporate**

- (1) If:
- (a) a body corporate contravenes a civil penalty provision; and
  - (b) an executive officer of the body corporate knew that, or was reckless or negligent as to whether, the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body corporate in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention;
- the officer contravenes this subsection.
- (2) For the purposes of subsection (1), the officer is **reckless** as to whether the contravention would occur if:
- (a) the officer is aware of a substantial risk that the contravention would occur; and
  - (b) having regard to the circumstances known to the officer, it is unjustifiable to take the risk.
- (3) For the purposes of subsection (1), the officer is **negligent** as to whether the contravention would occur if the officer's conduct involves:
- (a) such a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
  - (b) such a high risk that the contravention would occur;
- that the conduct merits the imposition of a pecuniary penalty.

#### *Civil penalty provision*

- (4) Subsection (1) is a **civil penalty provision**.

Note: Division 1 provides for pecuniary penalties for breaches of civil penalty provisions.

**154P Reasonable steps to prevent contravention**

- (1) For the purposes of section 154N, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent a contravention, a court may have regard to all relevant matters, including:
  - (a) what action (if any) the officer took directed towards ensuring the following (to the extent that the action is relevant to the contravention):
    - (i) that the body corporate arranges regular professional assessments of the body corporate's compliance with civil penalty provisions;
    - (ii) that the body corporate implements any appropriate recommendations arising from such an assessment;
    - (iii) that the body corporate's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with civil penalty provisions in so far as those requirements affect the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware of the contravention.
- (2) This section does not limit section 154N.

## **Part 15B—Other remedies**

### **Division 1—Enforceable undertakings**

#### **154Q Acceptance of undertakings**

- (1) The Regulator may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with this Act, the regulations or the associated provisions, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with this Act, the regulations or the associated provisions, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act, the regulations or the associated provisions, or is unlikely to contravene this Act, the regulations or the associated provisions, in the future;
  - (d) a written undertaking given by a person that the person will surrender one or more renewable energy certificates under section 28A, to compensate for the creation of one or more certificates that the person was not entitled to create.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the Regulator.
- (4) The Regulator may, by written notice given to the person, cancel the undertaking.
- (5) The Regulator must publish the undertaking on its website.
- (6) In this section:

***associated provisions*** means sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1 and 137.2 of the *Criminal Code*, in so far as those sections relate to:

  - (a) this Act; or
  - (b) the regulations.

### **154R Enforcement of undertakings**

- (1) If:
  - (a) a person has given an undertaking under section 154Q; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the Regulator considers that the person has breached the undertaking;the Regulator may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Regulator, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the court considers appropriate.

## **Division 2—Injunctions**

### **154S Injunctions**

- (1) If a person has engaged, is engaging, or is about to engage in any conduct that is or would be:
  - (a) an offence against this Act or the regulations; or
  - (b) a contravention of a civil penalty provision;the Federal Court may, on the application of the Regulator or any other aggrieved person, grant an injunction restraining the person from engaging in the conduct.
- (2) If:
  - (a) a person has refused or failed, is refusing or failing, or is about to refuse or fail, to do a thing; and
  - (b) the refusal or failure is, or would be:
    - (i) an offence against this Act or the regulations; or
    - (ii) a contravention of a civil penalty provision;the Federal Court may, on the application of the Regulator or any other aggrieved person, grant an injunction requiring the person to do the thing.
- (3) The power of the Federal Court to grant an injunction may be exercised:
  - (a) whether or not it appears to the Court that the person intends to engage, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind.
- (4) The Federal Court may discharge or vary an injunction granted under this section.
- (5) The Federal Court may grant an interim injunction pending a determination of an application under subsection (1).
- (6) The powers granted by this section are in addition to, and not in derogation of, any other powers of the Federal Court.



## Part 16—Miscellaneous

### 155 Contracting outsiders

The Regulator, on behalf of the Commonwealth, may engage any person under contract to assist in the performance of any function of the Regulator.

### 156 Delegation

#### *Delegation to senior officers of the Regulator*

- (1) The Regulator may, by writing, delegate to one or more senior officers of the Regulator any or all of the Regulator's functions or powers under this Act.

#### *Delegation to senior employees of an authorised Commonwealth contractor*

- (2) The Regulator may, by writing, delegate to one or more senior employees of an authorised Commonwealth contractor any or all of the Regulator's functions or powers under this Act, other than the function referred to in:
- (a) sections 30, 38AF, 38AG, 41, 48, 48B, 49, 105, 107 and 108; and
  - (b) Parts 6, 7, 9, 11, 12, 14, 15A and 15B.

#### *Delegate subject to direction of Regulator*

- (3) A delegate is, in the performance of a function delegated under subsection (1) or (2), or in the exercise of a power delegated under subsection (1) or (2), subject to the directions of the Regulator.

#### *Section 70 of the Crimes Act 1914*

- (4) For the purposes of the application of the definition of **Commonwealth officer** in subsection 3(1) of the *Crimes Act 1914* to section 70 of that Act, a person who performs functions, or exercises powers, under a delegation under this section is taken to be a person who performs services for the Commonwealth.

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**157 Appropriation**

Payments under this Act are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.

**159 Evidence**

- (1) The mere production of:
  - (a) a notice of assessment; or
  - (b) a document signed by an official of the Regulator purporting to be a copy of a notice of assessment;is conclusive evidence of the due making of the assessment and, except in proceedings under Division 1 of Part 6 on a review or appeal relating to the assessment, that the amounts and all of the particulars of the assessment are correct.
- (2) A document signed by an official of the Regulator purporting to be a copy of a document issued or given by the Regulator is prima facie evidence that the second-mentioned document was so issued or given.
- (3) A document signed by an official of the Regulator purporting to be a copy of, or an extract from, a renewable energy shortfall statement or a notice of assessment is evidence of the matter set out in the document to the same extent as the original statement or notice, as the case may be, would be if it were produced.
- (4) A certificate signed by an official of the Regulator certifying that a sum specified in the certificate was, on the day of the certificate, payable by a person in relation to an amount of a renewable energy shortfall charge related liability, is prima facie evidence of the matters stated in the certificate.
- (5) An energy acquisition statement or a renewable energy shortfall statement purporting to be made or signed by or on behalf of a liable entity is evidence that the statement was made by the liable entity or with the liable entity's authority.

**160 Records to be kept and preserved by registered persons, liable entities and holders of partial exemption certificates**

- (1) A person (the *record-keeper*) who:
  - (a) is a registered person; or

- (b) is a liable entity; or
  - (c) has been issued with a partial exemption certificate;

must keep records that record and explain all transactions and other acts engaged in, or required to be engaged in, by the record-keeper under this Act.
- (2) The records kept by a registered person must include any documents relevant to ascertaining:
  - (a) the amount of electricity generated by the registered person during a year; and
  - (b) the amount of that electricity that was generated from eligible energy sources; and
  - (c) details of all large-scale generation certificates and small-scale technology certificates issued by the registered person during the year; and
  - (d) any other prescribed matter.
- (3) The records kept by a liable entity must include any documents relevant to ascertaining:
  - (a) the amount of electricity acquired by the liable entity under relevant acquisitions during a year; and
  - (b) any other prescribed matter.
- (3A) The records kept by a person who has been issued with a partial exemption certificate must include any documents relevant to ascertaining:
  - (a) a matter to which the certificate relates; and
  - (b) any other prescribed matter.
- (4) The records must be kept:
  - (a) in writing in the English language or so as to enable the records to be readily accessible and convertible into writing in the English language; and
  - (b) in the case of records kept by a liable entity—so that the liable entity's liability under this Act can be readily ascertained; and
  - (c) in the case of records kept by a person who has been issued with a partial exemption certificate—so that matters to which the certificate relates can be readily ascertained.

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- (5) A record-keeper who has possession of any records kept or obtained under or for the purposes of this Act must retain them until the end of 5 years after those records were prepared or obtained, or the completion of the transactions or acts to which those records relate, whichever is later.
- (6) Nothing in this section requires a record-keeper to retain records if:
  - (a) the Regulator has notified the record-keeper that the retention of the records is not required; or
  - (b) the record-keeper is a company that has gone into liquidation and been finally dissolved.
- (7) A person commits an offence if the person fails to comply with a requirement under this section.

Penalty: 30 penalty units.

**160A Prescribing matters by reference to other instruments**

- (1) The regulations may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time.
- (2) Subsection (1) has effect despite anything in subsection 14(2) of the *Legislative Instruments Act 2003*.
- (3) If the regulations make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Regulator must ensure that the text of the matter applied, adopted or incorporated is published on its website.
- (4) Subsection (3) does not apply if the publication would infringe copyright.

**160B Administrative decisions under the regulations**

The regulations may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

**161 Regulations**

The Governor-General may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, may make regulations prescribing penalties not exceeding a fine of 50 penalty units for offences against the regulations.

**162 Biennial review of operation of renewable energy legislation**

- (1) The Minister must cause an independent review of the following to be undertaken as soon as practicable after 30 June 2012 and every 2 years after that date:
  - (a) the operation of this Act and the scheme constituted by this Act;
  - (b) the operation of the regulations;
  - (c) the operation of the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*;
  - (d) the operation of the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*;
  - (e) the diversity of renewable energy access to the scheme constituted by this Act, to be considered with reference to a cost benefit analysis of the environmental and economic impact of that access.
- (2) A review must be undertaken by a person who, in the Minister's opinion, possesses appropriate qualifications to undertake the review.
- (3) The person undertaking a review must give the Minister a written report of the review before 31 December in that year.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the day on which the report is given to the Minister.
- (5) The report is not a legislative instrument.

## **Part 17—Application of Act to 2001**

### **163 Object of Part**

The object of this Part is:

- (a) not to apply this Act to the period of 3 months commencing on 1 January 2001; but
- (b) to apply this Act to the period of 9 months commencing on 1 April 2001 as if that period were the whole of the year commencing on 1 January 2001.

This means that the Act does not apply to electricity generated before 1 April 2001.

### **164 Modification of references to a year**

This Act applies in relation to the year commencing on 1 January 2001 as if all references to a year, to the extent that they are references to the year commencing on 1 January 2001 (including specific references to the year commencing on 1 January 2001), were references to the period of 9 months commencing on 1 April 2001.

### **165 Modification of other references**

This Act applies in relation to the year commencing on 1 January 2001 as if the reference in section 39 to “31 March in the year” were a reference to “30 June in the year”.

**Table of Acts****Notes to the *Renewable Energy (Electricity) Act 2000*****Note 1**

The *Renewable Energy (Electricity) Act 2000* as shown in this compilation comprises Act No. 174, 2000 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Renewable Energy (Electricity) Act 2000</i>	174, 2000	21 Dec 2000	18 Jan 2001	
<i>Renewable Energy (Electricity) Amendment Act 2006</i>	90, 2006	30 June 2006	Schedule 1: 11 Sept 2006 (see F2006L02947) Remainder: Royal Assent	Sch. 1 (items 193–207)
<i>Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008</i>	26, 2008	23 June 2008	Schedule 1 (items 109–112): Royal Assent	—
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 1 (items 41–45): (a)	—
<i>Australian Energy Market Amendment (AEMO and Other Measures) Act 2009</i>	17, 2009	26 Mar 2009	Schedule 1 (items 7–11): 1 July 2009 (see F2009L02489 and South Australia <i>Gazette</i> 25 June 2009 p3000)	—
<i>Renewable Energy (Electricity) Amendment Act 2009</i>	78, 2009	7 Sept 2009	Schedule 3 (items 1, 2): 1 July 2011 Schedule 3 (items 3, 5): 8 Sept 2009 Schedule 3 (items 4, 8, 9): 1 Feb 2010 Schedule 3 (items 6, 7): 18 Apr 2010 (see F2010L00946) Remainder: Royal Assent	Sch. 1 (item 7), Sch. 2 (item 22) and Sch. 3 (items 3–9)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision Act 2010</i>	8, 2010	1 Mar 2010	Schedule 5 (item 137(a)): (b)	—
<i>Renewable Energy (Electricity) Amendment Act 2010</i>	69, 2010	28 June 2010	Schedule 1 (items 1–99): 1 Jan 2011 Schedule 1 (items 99A–136) and Schedule 2: 29 June 2010	Sch. 2
<i>Acts Interpretation Amendment Act 2011</i>	46, 2011	27 June 2011	Schedule 2 (items 987–990) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011</i>	58, 2011	28 June 2011	Schedule 1 (items 154–157): (c)	—
<i>Financial Framework Legislation Amendment Act (No. 1) 2011</i>	89, 2011	4 Aug 2011	Schedule 5: Royal Assent	Sch. 5 (item 2)
<i>Clean Energy (Consequential Amendments) Act 2011</i>	132, 2011	18 Nov 2011	Schedule 1 (items 195–212, 215, 220, 221): 2 Apr 2012 (see s. 2(1)) Schedule 1 (item 451A): [see Note 3] Schedule 3: 19 Nov 2011	Sch. 1 (items 215, 220, 221) and Sch. 3 (item 6)



**Act Notes**

(a) Subsection 2(1) (item 29) of the *Statute Law Revision Act 2008* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
29. Schedule 1, items 41 to 45	Immediately after the commencement of the <i>Renewable Energy (Electricity) Act 2000</i> .	18 January 2001

(b) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

(c) Subsection 2(1) (item 2) of the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 and 2	Immediately after the commencement of section 2 of the <i>Governance of Australian Government Superannuation Schemes Act 2011</i> .	1 July 2011



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 1</b>	
S. 3 .....	am. No. 90, 2006; No. 78, 2009
S. 4 .....	am. No. 78, 2009
S. 5 .....	am. No. 90, 2006; Nos. 17 and 78, 2009; No. 69, 2010; Nos. 46, 58 and 132, 2011
S. 6 .....	am. No. 69, 2010
Ss. 7B, 7C.....	ad. No. 78, 2009
<b>Part 2</b>	
<b>Division 1</b>	
S. 8 .....	am. No. 90, 2006; No. 78, 2009; No. 69, 2010
<b>Division 2</b>	
Heading to Div. 2 of Part 2.....	rs. No. 90, 2006
S. 9 .....	am. No. 90, 2006
S. 11 .....	rs. No. 132, 2011
<b>Division 2A</b>	
Div. 2A of Part 2 .....	ad. No. 90, 2006
S. 12A .....	ad. No. 90, 2006 am. No. 78, 2009
Ss. 12B, 12C.....	ad. No. 90, 2006
<b>Division 3</b>	
S. 13 .....	am. No. 90, 2006; No. 78, 2009; No. 69, 2010
S. 14 .....	am. No. 90, 2006; No. 78, 2009
Note to s. 14(1) .....	ad. No. 90, 2006
Note to s. 14(3) .....	ad. No. 90, 2006 am. No. 78, 2009
Note to s. 15.....	ad. No. 90, 2006
Subhead. to s. 15A(1).....	ad. No. 78, 2009
S. 15A .....	ad. No. 90, 2006 am. No. 78, 2009; No. 69, 2010
S. 15B .....	ad. No. 90, 2006
S. 17 .....	rs. No. 90, 2006
S. 17A .....	ad. No. 78, 2009 am. No. 69, 2010
<b>Division 4</b>	
Heading to Div. 4 of Part 2.....	rs. No. 69, 2010
<b>Subdivision AA</b>	
Subdiv. AA of Div. 4 of..... Part 2	ad. No. 69, 2010
S. 17B .....	ad. No. 69, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision A</b>	
Heading to Subdiv. A of ..... Div. 4 of Part 2	rs. No. 69, 2010
S. 17C.....	ad. No. 69, 2010
S. 18 .....	am. No. 90, 2006; No. 78, 2009
S. 19 .....	rs. No. 90, 2006 am. No. 69, 2010
Note to s. 19.....	rs. No. 69, 2010
S. 20 .....	am. No. 90, 2006; No. 78, 2009
S. 20A .....	ad. No. 90, 2006
<b>Subdivision B</b>	
Heading to Subdiv. B of ..... Div. 4 of Part 2	rs. No. 69, 2010
S. 20B.....	ad. No. 69, 2010
S. 21 .....	am. No. 90, 2006; No. 69, 2010
Note to s. 21(1) .....	ad. No. 69, 2010
S. 22 .....	am. No. 90, 2006; No. 69, 2010
S. 23AA.....	ad. No. 90, 2006
<b>Subdivision BA</b>	
Heading to Subdiv. BA of ..... Div. 4 of Part 2	rs. No. 69, 2010
S. 23AB.....	ad. No. 69, 2010
S. 23A .....	am. No. 90, 2006; No. 69, 2010
Note to s. 23A(1) .....	ad. No. 69, 2010
S. 23AAA .....	ad. No. 69, 2010 am. No. 132, 2011
Subhead. to s. 23B(1).....	ad. No. 78, 2009
S. 23B .....	am. No. 90, 2006; No. 78, 2009; No. 69, 2010
Ss. 23C, 23D.....	am. No. 90, 2006
S. 23E .....	ad. No. 90, 2006
<b>Subdivision BB</b>	
Subdiv. BB of Div. 4 of..... Part 2	ad. No. 90, 2006
S. 23F .....	ad. No. 90, 2006
<b>Subdivision C</b>	
S. 24 .....	am. No. 90, 2006
Ss. 24A, 24B .....	ad. No. 69, 2010
<b>Division 5</b>	
Heading to s. 25 .....	am. No. 90, 2006 rs. No. 69, 2010
S. 25 .....	am. No. 90, 2006; No. 78, 2009; No. 69, 2010
Heading to s. 25A.....	rs. No. 69, 2010
S. 25A .....	ad. No. 90, 2006 am. No. 78, 2009; No. 69, 2010

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Provision affected	How affected
S. 26 .....	am. No. 69, 2010; No. 132, 2011
<b>Division 6</b>	
S. 27 .....	am. No. 69, 2010
Note to s. 27 .....	ad. No. 69, 2010
S. 28 .....	am. No. 69, 2010
<b>Division 7</b>	
S. 28A .....	ad. No. 90, 2006
Notes 1, 2 to s. 28A .....	rs. No. 69, 2010
S. 29 .....	am. No. 90, 2006; No. 69, 2010
<b>Division 8</b>	
Heading to s. 30 .....	rs. No. 90, 2006
Subhead. to s. 30A(1) .....	am. No. 69, 2010
S. 30A .....	ad. No. 90, 2006 am. No. 69, 2010; No. 132, 2011
<b>Division 9</b>	
Div. 9 of Part 2 .....	ad. No. 90, 2006
S. 30B .....	ad. No. 90, 2006
<b>Division 10</b>	
Div. 10 of Part 2 .....	ad. No. 90, 2006
S. 30C .....	ad. No. 90, 2006
<b>Division 11</b>	
Div. 11 of Part 2 .....	ad. No. 90, 2006
S. 30D .....	ad. No. 90, 2006 am. No. 78, 2009; No. 69, 2010; No. 132, 2011
S. 30E .....	ad. No. 90, 2006
<b>Division 12</b>	
Heading to Div. 12 of Part 2 .....	rs. No. 78, 2009
Div. 12 of Part 2 .....	ad. No. 90, 2006
S. 30F .....	ad. No. 90, 2006
S. 30G .....	ad. No. 78, 2009
<b>Part 2A</b>	
Part 2A .....	ad. No. 69, 2010
<b>Division 1</b>	
S. 30H .....	ad. No. 69, 2010
<b>Division 2</b>	
S. 30J .....	ad. No. 69, 2010
<b>Division 3</b>	
Ss. 30K, 30L .....	ad. No. 69, 2010
<b>Division 4</b>	
S. 30LA .....	ad. No. 69, 2010
Ss. 30M, 30N .....	ad. No. 69, 2010
Ss. 30P, 30Q .....	ad. No. 69, 2010

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Provision affected	How affected
<b>Division 5</b>	
Ss. 30R–30T .....	ad. No. 69, 2010
<b>Division 6</b>	
S. 30U .....	ad. No. 69, 2010
<b>Part 3</b>	
Ss. 31, 32 .....	am. No. 90, 2006; No. 17, 2009
S. 33 .....	am. No. 90, 2006
Heading to s. 34 .....	am. No. 90, 2006; No. 17, 2009
S. 34 .....	am. No. 90, 2006; No. 17, 2009
<b>Part 4</b>	
<b>Division 1AA</b>	
Div. 1AA of Part 4 .....	ad. No. 69, 2010
S. 34A .....	ad. No. 69, 2010
<b>Division 1</b>	
<b>Subdivision A</b>	
Heading to Subdiv. A of ..... Div. 1 of Part 4	ad. No. 69, 2010
<b>Subdivision B</b>	
Subdiv. B of Div. 1 of ..... Part 4	ad. No. 69, 2010
Ss. 36, 37 .....	rs. No. 69, 2010
S. 38 .....	am. No. 90, 2006; No. 78, 2009 rs. No. 69, 2010
<b>Subdivision C</b>	
Subdiv. C of Div. 1 of ..... Part 4	ad. No. 69, 2010
Ss. 38AA–38AI .....	ad. No. 69, 2010
<b>Division 1A</b>	
Div. 1A of Part 4 .....	ad. No. 78, 2009
S. 38A .....	ad. No. 78, 2009 am. No. 69, 2010
Ss. 38B, 38C .....	ad. No. 78, 2009
<b>Division 2</b>	
Heading to Div. 2 of Part 4 .....	rs. No. 69, 2010
Ss. 39, 40 .....	am. No. 90, 2006; No. 78, 2009; No. 69, 2010
<b>Division 2A</b>	
Div. 2A of Part 4 .....	ad. No. 69, 2010
S. 40A .....	ad. No. 69, 2010
<b>Division 2AA</b>	
Div. 2AA of Part 4 .....	ad. No. 69, 2010
S. 40AB .....	ad. No. 69, 2010

**Table of Amendments**

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Provision affected	How affected
<b>Division 3</b>	
Heading to Div. 3 of Part 4.....	rs. No. 69, 2010
Ss. 40B, 40C.....	ad. No. 69, 2010
S. 41 .....	am. No. 69, 2010
Note to s. 41.....	ad. No. 90, 2006
S. 42 .....	am. No. 90, 2006
<b>Part 5</b>	
Heading to Part 5 .....	rs. No. 78, 2009
<b>Division 1AA</b>	
Div. 1AA of Part 5.....	ad. No. 69, 2010
S. 43A .....	ad. No. 69, 2010
<b>Division 1</b>	
Div. 1 of Part 5 .....	rs. No. 69, 2010
<b>Subdivision A</b>	
S. 44 .....	am. No. 90, 2006; No. 78, 2009 rs. No. 69, 2010
Note to s. 44(1) .....	ad. No. 90, 2006 rs. No. 69, 2010
S. 44A .....	ad. No. 69, 2010
S. 45 .....	am. No. 90, 2006 rs. No. 69, 2010
S. 45A .....	ad. No. 90, 2006 rs. No. 69, 2010
Ss. 45B–45E .....	ad. No. 69, 2010
<b>Subdivision B</b>	
S. 46 .....	am. No. 90, 2006 rs. No. 69, 2010
<b>Division 1A</b>	
Div. 1A of Part 5 .....	ad. No. 78, 2009
Ss. 46A, 46B .....	ad. No. 78, 2009 am. No. 69, 2010
S. 46C.....	ad. No. 78, 2009
Note to s. 46C(4).....	am. No. 69, 2010
Ss. 46D–46F .....	ad. No. 69, 2010
<b>Division 2</b>	
<b>Subdivision A</b>	
Subdiv. A of Div. 2 of..... Part 5	ad. No. 69, 2010
Ss. 47, 48.....	am. No. 90, 2006 rs. No. 69, 2010
<b>Subdivision B</b>	
Subdiv. B of Div. 2 of..... Part 5	ad. No. 69, 2010
Ss. 48A, 48B .....	ad. No. 69, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision C</b>	
Heading to Subdiv. C of ..... Div. 2 of Part 5	ad. No. 69, 2010
S. 49 .....	am. No. 90, 2006
Note to s. 49(1) .....	ad. No. 90, 2006
S. 50 .....	am. No. 90, 2006
S. 52 .....	am. No. 90, 2006; No. 69, 2010
S. 53A .....	ad. No. 90, 2006
<b>Part 6</b>	
<b>Division 1</b>	
Ss. 54, 55 .....	am. No. 90, 2006
Heading to s. 57 .....	am. No. 90, 2006
Ss. 57, 58 .....	am. No. 90, 2006
S. 62 .....	am. No. 90, 2006
S. 65 .....	am. No. 90, 2006
<b>Division 2</b>	
S. 66 .....	am. No. 90, 2006; No. 78, 2009; No. 69, 2010
<b>Part 7</b>	
Heading to Part 7 .....	rs. No. 90, 2006
<b>Division 1</b>	
S. 67 .....	rs. No. 69, 2010
Heading to s. 68 .....	am. No. 90, 2006
S. 68 .....	am. No. 90, 2006
S. 70 .....	rs. No. 90, 2006
S. 72 .....	am. No. 69, 2010
<b>Division 2</b>	
<b>Subdivision A</b>	
S. 73 .....	am. No. 69, 2010
<b>Subdivision C</b>	
Ss. 81, 82 .....	am. No. 90, 2006
<b>Subdivision D</b>	
Ss. 85, 86 .....	am. No. 90, 2006
<b>Subdivision E</b>	
S. 89 .....	am. No. 90, 2006
<b>Part 8</b>	
Heading to Part 8 .....	rs. No. 69, 2010
Heading to s. 95 .....	am. No. 69, 2010
Ss. 95, 96 .....	am. No. 90, 2006; No. 69, 2010
Ss. 97, 98 .....	am. No. 69, 2010
<b>Part 9</b>	
S. 99 .....	am. No. 90, 2006 rs. No. 69, 2010



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 99A .....	ad. No. 69, 2010
S. 100.....	am. No. 90, 2006
Heading to s. 101 .....	am. No. 90, 2006
S. 101.....	am. No. 90, 2006
Heading to s. 102 .....	am. No. 90, 2006
S. 102.....	am. No. 90, 2006
Heading to s. 103 .....	am. No. 90, 2006
S. 103.....	am. No. 90, 2006
<b>Part 11</b>	
<b>Division 2</b>	
S. 107.....	am. No. 90, 2006; No. 132, 2011
S. 109.....	am. No. 90, 2006
<b>Division 3</b>	
<b>Subdivision A</b>	
Heading to s. 110 .....	rs. No. 90, 2006
S. 110.....	am. No. 90, 2006
S. 111.....	am. No. 90, 2006; No. 69, 2010
<b>Subdivision B</b>	
Ss. 112, 113 .....	am. No. 90, 2006
Ss. 114, 115 .....	rep. No. 90, 2006
<b>Division 4</b>	
Ss. 119, 120 .....	am. No. 90, 2006
<b>Division 5</b>	
S. 124.....	am. No. 90, 2006
<b>Division 6</b>	
S. 125.....	am. No. 90, 2006
<b>Part 11A</b>	
Part 11A .....	ad. No. 90, 2006
S. 125A .....	ad. No. 90, 2006
S. 125B .....	ad. No. 90, 2006 am. No. 69, 2010
Ss. 125C–125E .....	ad. No. 90, 2006
<b>Part 12</b>	
Heading to Part 12 .....	rs. No. 132, 2011
S. 126.....	am. No. 90, 2006 rep. No. 132, 2011
S. 127.....	am. No. 90, 2006; No. 73, 2008 rep. No. 132, 2011
S. 128.....	am. No. 90, 2006 rep. No. 132, 2011
S. 129.....	am. No. 73, 2008 rep. No. 132, 2011

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 130.....	am. No. 90, 2006; No. 73, 2008 rep. No. 132, 2011
S. 131.....	am. No. 73, 2008 rep. No. 132, 2011
S. 132.....	am. No. 90, 2006; No. 73, 2008; No. 69, 2010; No. 89, 2011 rep. No. 132, 2011
S. 133.....	rep. No. 132, 2011
S. 134.....	am. No. 90, 2006 rs. No. 69, 2010
<b>Part 13</b>	
<b>Division 1</b>	
S. 135.....	am. No. 69, 2010
<b>Division 2</b>	
S. 137.....	am. No. 8, 2010
<b>Division 3</b>	
S. 138.....	am. No. 90, 2006; No. 78, 2009
S. 139.....	am. No. 8, 2010
<b>Division 4</b>	
Heading to Div. 4 of Part 13.....	rs. No. 69, 2010
Heading to s. 140 .....	am. No. 69, 2010
S. 140.....	am. No. 90, 2006; No. 78, 2009; No. 69, 2010
S. 141.....	am. Nos. 8 and 69, 2010
<b>Division 4A</b>	
Div. 4A of Part 13 .....	ad. No. 69, 2010
Ss. 141AA, 141AB.....	ad. No. 69, 2010
<b>Division 5</b>	
S. 141A .....	am. No. 90, 2006; No. 78, 2009
S. 141B .....	am. No. 8, 2010
Part 14 .....	rep. No. 132, 2011
Ss. 142–146 .....	rep. No. 132, 2011
S. 147.....	am. No. 90, 2006; No. 26, 2008; No. 58, 2011 rep. No. 132, 2011
S. 147A .....	ad. No. 90, 2006 rep. No. 132, 2011
S. 148.....	am. No. 90, 2006; No. 46, 2011 rep. No. 132, 2011
Note to s. 148(1).....	ad. No. 46, 2011 rep. No. 132, 2011
Note to s. 148(3).....	rep. No. 46, 2011
Ss. 149–151 .....	rep. No. 132, 2011
<b>Part 15</b>	
Heading to Part 15 .....	rs. No. 90, 2006
Ss. 152, 153 .....	rep. No. 90, 2006
S. 154.....	am. No. 90, 2006; No. 69, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 15A</b>	
Part 15A.....	ad. No. 69, 2010
<b>Division 1</b>	
Ss. 154A–154H.....	ad. No. 69, 2010
Ss. 154J–154M.....	ad. No. 69, 2010
<b>Division 2</b>	
S. 154N.....	ad. No. 69, 2010
S. 154P.....	ad. No. 69, 2010
<b>Part 15B</b>	
Part 15B.....	ad. No. 69, 2010
<b>Division 1</b>	
Ss. 154Q, 154R.....	ad. No. 69, 2010
<b>Division 2</b>	
S. 154S.....	ad. No. 69, 2010
<b>Part 16</b>	
Subhead. to s. 156(1).....	rs. No. 132, 2011
S. 156.....	am. No. 69, 2010; No. 132, 2011
S. 158.....	rep. No. 132, 2011
S. 159.....	am. No. 132, 2011
Heading to s. 160.....	am. No. 78, 2009
S. 160.....	am. No. 90, 2006; No. 78, 2009; No. 69, 2010
Ss. 160A, 160B.....	ad. No. 69, 2010
S. 161.....	am. No. 90, 2006
S. 162.....	rs. No. 78, 2009; No. 69, 2010

## Note 2

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## Note 2

Section 8—Schedule 1 (item 39) of the *Renewable Energy (Electricity) Amendment Act 2010* (No. 69, 2010) provides as follows:

### Schedule 1

#### 39 Section 8

After:

This Part deals with the creation, trading and extinguishing of renewable energy certificates.

Insert:

There are 2 types of renewable energy certificates:

- (a) large-scale generation certificates, which are created in relation to the generation of electricity by accredited power stations; and
- (b) small-scale technology certificates, which are created in relation to the installation of solar water heaters and small generation units.

The proposed amendment was misdescribed and is not incorporated in this compilation.

## Note 3

*Clean Energy (Consequential Amendments) Act 2011* (No. 132, 2011)

The following amendment commences on 1 July 2012:

### Schedule 1

#### 451A Section 162

Repeal the section, substitute:

**162 Periodic reviews of operation of renewable energy legislation**

- (1) The Climate Change Authority must conduct reviews of the following:
- (a) the operation of this Act and the scheme constituted by this Act;
  - (b) the operation of the regulations;
  - (c) the operation of the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*;
  - (d) the operation of the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010*;
  - (e) the diversity of renewable energy access to the scheme constituted by this Act, to be considered with reference to a cost benefit analysis of the environmental and economic impact of that access.

*Public consultation*

- (2) In conducting a review, the Climate Change Authority must make provision for public consultation.

*Report*

- (3) The Climate Change Authority must:
- (a) give the Minister a report of the review; and
  - (b) as soon as practicable after giving the report to the Minister, publish the report on the Climate Change Authority's website.
- (4) The Minister must cause copies of a report under subsection (3) to be tabled in each House of the Parliament within 15 sitting days of that House after the review is completed.

*First review*

- (5) The first review under subsection (1) must be completed before the end of 31 December 2012.

*Subsequent reviews*

- (6) Each subsequent review under subsection (1) must be completed within 2 years after the deadline for completion of the previous review.

### Note 3

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- (7) For the purposes of subsections (4), (5) and (6), a review is completed when the report of the review is given to the Minister under subsection (3).

#### *Recommendations*

- (8) A report of a review under subsection (1) may set out recommendations to the Commonwealth Government.
- (9) In formulating a recommendation that the Commonwealth Government should take particular action, the Climate Change Authority must analyse the costs and benefits of that action.
- (10) Subsection (9) does not prevent the Climate Change Authority from taking other matters into account in formulating a recommendation.
- (11) A recommendation must not be inconsistent with the objects of this Act.
- (12) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government, the report must set out the Climate Change Authority's reasons for those recommendations.

#### *Government response to recommendations*

- (13) If a report of a review under subsection (1) sets out one or more recommendations to the Commonwealth Government:
- (a) as soon as practicable after receiving the report, the Minister must cause to be prepared a statement setting out the Commonwealth Government's response to each of the recommendations; and
  - (b) within 6 months after receiving the report, the Minister must cause copies of the statement to be tabled in each House of the Parliament.
- (14) The Commonwealth Government's response to the recommendations may have regard to the views of the following:
- (a) the Climate Change Authority;
  - (b) the Regulator;
  - (c) such other persons as the Minister considers relevant.

As at 2 April 2012 the amendment is not incorporated in this compilation.

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**Table A****Table A****Application, saving or transitional provisions**

*Renewable Energy (Electricity) Amendment Act 2006* (No. 90, 2006)

**Schedule 1****193 Application—creation of renewable energy certificates**

The amendments made by items 4, 44, 45, 46, 69, 70, 71, 72, 73, 179 and 180 apply in relation to certificates created after the commencement of those items.

**194 Application—charges**

The amendments made by items 7, 15, 19, 114, 125, 130, 131, 133, 134, 135 and 145 to 152 apply in relation to amounts that a liable entity becomes liable to pay after the commencement of those items.

**195 Application—applications for accreditation of a power station**

The amendments made by items 30, 31, 32, 34, 38 and 181 apply in relation to applications made after the commencement of those items.

**196 Application—time limit for deciding applications**

The amendment made by item 42 (in so far as it inserts section 15A of the *Renewable Energy (Electricity) Act 2000*) applies in relation to applications made after the commencement of that item.

**197 Application—electricity generation**

The amendments made by items 43 and 49 apply in relation to electricity generated after the commencement of those items.

**198 Transitional—electricity generated before commencement**

A person is not entitled to create a certificate under section 18 of the *Renewable Energy (Electricity) Act 2000*, in respect of electricity generated before this item commences, at any time after the end of the year after the year in which this item commences.

Note: Section 24 of that Act creates offences for the improper creation of certificates.

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**Table A**

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**199 Application—solar water heaters and small generation units**

*Creation of solar water heater certificates etc.*

- (1) The amendments made by items 54, 55, 57 and 58 apply in relation to solar water heaters installed after the commencement of those items.

*Creation of small generation unit certificates*

- (2) The amendments made by items 59, 60 (in so far as it inserts subsection 23A(2) of the *Renewable Energy (Electricity) Act 2000*), 65 and 66 apply in relation to small generation units installed after the commencement of those items.
- (3) The amendments made by items 60 (in so far as it inserts subsection 23A(3) of the *Renewable Energy (Electricity) Act 2000*), 61 and 62 apply in relation to small generation units installed before or after the commencement of those items.

*Assignment of right to create small generation unit certificates*

- (4) The amendments made by items 63 and 64 apply in relation to assignments made after the commencement of those items in relation to small generation units installed before or after that commencement.

*Returns*

- (5) The amendment made by item 67 applies in relation to years ending after the commencement of that item.

**200 Application—surrender of certificates**

The amendment made by item 74 applies in relation to certificates created before or after the commencement of that item.

**201 Application—relevant acquisitions of electricity**

The amendments made by items 81 and 84 apply in relation to acquisitions of electricity occurring in the year ending 31 December 2006 or in any later year.



**Table A****202 Saving—fees for surrender of certificates**

Regulations in force for the purposes of subsection 44(5) of the *Renewable Energy (Electricity) Act 2000* immediately before the commencement of this item have effect after that commencement as if they were regulations made for the purposes of that subsection after that commencement.

**203 Application—secrecy**

The amendments made by items 172, 173 and 174 apply in relation to proceedings instituted after the commencement of those items.

**204 Application—publication**

The amendment made by item 175 applies in relation to years ending after the commencement of that item.

**205 Application—register of accredited power stations**

The amendment made by item 178 applies in relation to power stations accredited before or after the commencement of that item.

**206 Transitional—accredited power stations**

(1) This item applies in relation to a power station that was accredited under Division 3 of Part 2 of the *Renewable Energy (Electricity) Act 2000* before the commencement of this item.

(2) The Regulator must, within 28 days after the commencement of that item, approve a person as the nominated person for the power station.

Note: The register of accredited power stations is to contain the name of the nominated person for an accredited power station: see section 138 of the *Renewable Energy (Electricity) Act 2000*.

(3) The person approved must be a stakeholder in relation to the power station.

Note: Another stakeholder in relation to the power station may later apply to the Regulator to become the nominated person for the power station: see section 30B of the *Renewable Energy (Electricity) Act 2000*.

(4) The approval must be in writing and is taken to be an approval given under section 30B of the *Renewable Energy (Electricity) Act 2000*.

(5) For the purposes of section 66 of the *Renewable Energy (Electricity) Act 2000*:

**Table A**

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- (a) the approval is taken to be a reviewable decision; and
  - (b) the affected person in relation to that decision is taken to be any other stakeholder in relation to the power station.
- (6) For the purposes of this item, **stakeholder**, in relation to a power station, means:
  - (a) a person who operates the power station (whether alone or together with one or more other persons); or
  - (b) a person who owns all, or a part, of the power station (whether alone or together with one or more other persons).

## **207 Transitional—relevant acquisitions of electricity**

- (1) This item applies if:
    - (a) a person has lodged an energy acquisition statement for the year (the **applicable year**) ending on 31 December 2001, 31 December 2002, 31 December 2003, 31 December 2004 or 31 December 2005; and
    - (b) the amount of electricity specified in the statement as having been acquired under relevant acquisitions is greater than the amount that would have been acquired under relevant acquisitions if the amendments made by items 81 and 84 had applied to the applicable year.
  - (2) If this item applies, the amount of electricity acquired under relevant acquisitions during the applicable year is taken to be the amount that would have been acquired under relevant acquisitions if the amendments made by items 81 and 84 had applied to the applicable year.
  - (3) If, after the application of this item, the person has a carried forward surplus at the end of the applicable year, the Regulator may, upon written application by the person:
    - (a) reduce the carried forward surplus of the person for the applicable year (which may be to nil); and
    - (b) reduce the renewable energy certificate shortfall of another person for the applicable year by a corresponding amount.
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**Table A**


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*Renewable Energy (Electricity) Amendment Act 2009* (No. 78, 2009)

**Schedule 1****7 Application of amendments of section 23B**

The amendments made by items 4 to 6 apply to small generation units installed on or after 9 June 2009.

**Schedule 2****22 Transitional regulations**

The Governor-General may make regulations of a transitional nature relating to the transition from the application of paragraph (b) of the definition of *emissions-intensive trade-exposed activity* in subsection 5(1) of the *Renewable Energy (Electricity) Act 2000* (as inserted by item 2 of this Schedule) to the application of paragraph (a) of the definition of that expression.

**Schedule 3****3 Definitions**

In this Part:

*accredited power station* has the same meaning as in the Commonwealth Act.

*Commonwealth Act* means the *Renewable Energy (Electricity) Act 2000*.

*Commonwealth regulator*:

- (a) at any time before section 3 of the *Carbon Pollution Reduction Scheme Act 2009* commences—means the Regulator (within the meaning of the Commonwealth Act); and
- (b) at any time after the *Carbon Pollution Reduction Scheme Act 2009* commences—means the Authority (within the meaning of the *Australian Climate Change Regulatory Authority Act 2009*).

*renewable energy certificate* has the same meaning as in the Commonwealth Act.

*small generation unit* has the same meaning as in the Commonwealth Act.

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**Table A**

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**State Act** means a law of a State that substantially corresponds to the Commonwealth Act.

**State certificate** means a certificate, created under a State Act, that is substantially the same as a renewable energy certificate.

**State regulator** means a person or body appointed under a State Act that has substantially the same kind of functions under the State Act as the Commonwealth regulator has under the Commonwealth Act.

#### **4 Continuation of existing accreditations**

- (1) If a power station was, immediately before the day on which this item commences, accredited under a State Act and not already accredited under the Commonwealth Act:
    - (a) the power station is taken to be eligible for accreditation under section 15 of the Commonwealth Act; and
    - (b) the Commonwealth regulator is taken to have made a determination under paragraph 14(1)(a) of the Commonwealth Act that the components of the power station (as accredited under the State Act) are to be taken to be a power station for the purposes of the Commonwealth Act; and
    - (c) the Commonwealth regulator is taken to have approved an application for accreditation on the day on which this item commences.
  - (2) To avoid doubt, subsection 14(3) of the Commonwealth Act applies in relation to an application mentioned in paragraph (1)(b) of this item.
  - (3) If a person was, immediately before the day on which this item commences, a nominated person for a power station under a State Act:
    - (a) the person is taken to be:
      - (i) a registered person (unless the person is already a registered person under the Commonwealth Act); and
      - (ii) a nominated person for the power station; under the Commonwealth Act on and after the day on which this item commences; and
    - (b) the Commonwealth regulator is taken to have approved an application for the person to be registered on the day on which this item commences (unless the person is already a registered person under the Commonwealth Act).
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**Table A**

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- (4) To avoid doubt, section 12 of the Commonwealth Act applies in relation to an application mentioned in paragraph (3)(b) of this item as if the person were the applicant.

### **5 Existing accreditations not to continue if notice given**

A nominated person for a power station under a State Act may notify the Commonwealth regulator, in writing by 30 November 2009, that subitems 4(1) and (3) of this Schedule do not apply in relation to the power station. A notice has effect accordingly.

### **6 Conversion of State certificates to renewable energy certificates**

- (1) If, before 15 May 2010, a State regulator for a State gives written notice to the Commonwealth regulator that a State certificate has been surrendered:
- (a) under a provision of the State Act of the State that substantially corresponds to section 28A of the Commonwealth Act; and
  - (b) after 1 April 2010; and
  - (c) for the purposes of this subitem;
- then the Commonwealth regulator must, before 15 June 2010:
- (d) create a renewable energy certificate in respect of the State certificate; and
  - (e) register the renewable energy certificate under section 26 of the Commonwealth Act.
- (2) If, on or after 15 May 2010 but before 2 November 2010, a State regulator for a State gives written notice to the Commonwealth regulator that a State certificate has been surrendered:
- (a) under a provision of the State Act of the State that substantially corresponds to section 28A of the Commonwealth Act; and
  - (b) after 1 April 2010; and
  - (c) for the purposes of this subitem;
- then the Commonwealth regulator must, before 1 December 2010:
- (d) create a renewable energy certificate in respect of the State certificate; and
  - (e) register the renewable energy certificate under section 26 of the Commonwealth Act.
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**Table A**

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- (3) A notice under subitem (1) or (2) must:
    - (a) be in the prescribed form; and
    - (b) include any information prescribed by the regulations.
  - (4) Despite subitems (1) and (2), a renewable energy certificate may only be created for a State certificate once.
  - (5) For the purposes of a renewable energy certificate created in respect of a State certificate under subitem (1) or (2):
    - (a) the renewable energy certificate is treated as if it had been created under a prescribed provision of the Commonwealth Act; and
    - (b) the person who created the State certificate is treated as having created the renewable energy certificate; and
    - (c) subject to paragraph (6)(c), the person who owned the State certificate, immediately before it was surrendered under the State Act, is treated as the owner of the renewable energy certificate.
  - (6) Section 26 of the Commonwealth Act applies in relation to a renewable energy certificate created under subitem (1) or (2) as if:
    - (a) subsections (2), (3), (3A), (5) and (6) were ignored; and
    - (b) the Commonwealth regulator had determined that the renewable energy certificate is eligible for registration under subsection (4); and
    - (c) for the purposes of recording the ownership of the renewable energy certificate as mentioned in subsection (4)—the owner of the renewable energy certificate had created the certificate.
  - (7) A renewable energy certificate created in respect of a State certificate under subitem (1) or (2) is not a certificate for the purpose of section 23F of the Commonwealth Act.
  - (8) If a renewable energy certificate is created in respect of a State certificate under subitem (1) or (2), the register of renewable energy certificates maintained under section 135 of the Commonwealth Act must also contain the year in which the State certificate was created.
- Notice of conversion to be given by Commonwealth regulator*
- (9) The Commonwealth regulator must notify, in writing, the following persons that a renewable energy certificate has been created in respect
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**Table A**

of a State certificate and registered under section 26 of the Commonwealth Act:

- (a) the creator of the State certificate;
  - (b) the relevant State regulator;
  - (c) if the owner of the renewable energy certificate is not the creator of the State certificate—the owner of the renewable energy certificate.
- (10) The Commonwealth regulator must provide the notice as soon as practicable after the renewable energy certificate has been registered under section 26 of the Commonwealth Act.

## **7 No criminal liability for Commonwealth regulator**

Nothing in item 6 makes the Commonwealth regulator liable to be prosecuted for an offence.

## **8 Renewable energy certificate must not be created if State certificate created**

Despite section 18 of the Commonwealth Act, a nominated person (within the meaning of the Commonwealth Act) for an accredited power station must not create a renewable energy certificate for any electricity generated by the power station if a State certificate has been created in relation to that electricity.

## **9 Transitional regulations**

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Part to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) Without limiting subitem (1), regulations of a transitional nature may be made in relation to the following matters:
- (a) matters arising from the amendment or repeal of a State Act;
  - (b) exemptions from fees payable under regulations;
  - (c) the number of renewable energy certificates that may be created in relation to a small generation unit.

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**Table A**

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*Renewable Energy (Electricity) Amendment Act 2010* (No. 69, 2010)

**Schedule 2**

**1 Definitions**

In this Part:

***amended REE Act*** means the REE Act as in force after the reform commencement.

***old REE Act*** means the REE Act as in force immediately before the reform commencement.

***REE Act*** means the *Renewable Energy (Electricity) Act 2000*.

***reform commencement*** means the commencement of Part 1 of Schedule 1.

***reform transitional provisions*** means:

- (a) the provisions of this Part; and
- (b) any provisions of regulations made under Part 3 of this Schedule that relate to any of the amendments and repeals made by Part 1 of Schedule 1.

***Schedule 1*** means Schedule 1 to this Act.

**2 Application of amendments relating to liability to charge**

The amendments made by items 59 to 89 of Schedule 1 apply in relation to liability to charge under the REE Act, and related matters, for the year starting on the reform commencement and later years.

**3 Application of amendments relating to creation of certificates**

Subject to the other reform transitional provisions, the amendments made by items 39 to 48 of Schedule 1 apply in relation to the creation of certificates on or after the reform commencement.

**4 Certificates created before the reform commencement**

- (1) For the purposes of the amended REE Act, renewable energy certificates created under the REE Act before the reform commencement are taken to be large-scale generation certificates (including certificates that were created in relation to solar water heaters and small generation units).



**Table A**

- (2) This item does not apply to a certificate that ceased to be valid before the reform commencement.

### **5 Certificates created after reform commencement for small-scale technology installed before that commencement**

- (1) This item applies in relation to a solar water heater or small generation unit if:
- (a) the heater or unit was installed, or is taken to have been installed, before the reform commencement; and
  - (b) the period (the *certificate creation period*) within which, under old REE Act (and regulations under that Act), certificates could be created in relation to the heater or unit had not ended by that commencement.
- (2) For the remainder of the certificate creation period, Subdivision B or BA (as the case requires) of Division 4 of Part 2 of the amended REE Act applies in relation to the heater or the unit. However, certificates created in relation to the heater or unit are taken to be large-scale generation certificates.

### **6 References in contracts to renewable energy certificates**

- (1) This item applies to a contract that was entered into before this Act received the Royal Assent.
- (2) Subject to subitem (3), a reference in the contract to a renewable energy certificate, or to a certificate, within the meaning of the old REE Act is taken, on and after the reform commencement, to be a reference to a large-scale generation certificate within the meaning of the amended REE Act (including a certificate that is taken to be a large-scale generation certificate by any of the other reform transitional provisions).
- (3) Subitem (2) has effect subject to:
- (a) any contrary intention expressed in the contract; and
  - (b) any agreement to a contrary effect by the parties to the contract; and
  - (c) the regulations.

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**Table A**

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- (4) The fact that a contract refers to certificates as being created in relation to solar water heaters or small generation units is not, by itself, a contrary intention for the purpose of subitem (3).

**7 Contracts for the supply of certificates relating to small-scale technology**

- (1) This item applies in relation to a contract if:
- (a) the contract is or was entered into on or before 25 February 2010; and
  - (b) the contract is in writing; and
  - (c) the contract requires one of the parties to the contract to transfer renewable energy certificates (however described) to another party on or after the reform commencement; and
  - (d) because of item 6, the renewable energy certificates that are required to be transferred under the contract are large-scale generation certificates; and
  - (e) either:
    - (i) the contract refers to the certificates as being created in relation to solar water heaters or small generation units; or
    - (ii) it is clear from the context of the contract that the parties expect the certificates to be created in relation to solar water heaters or small generation units; and
  - (f) the contract does not solely relate to certificates that either:
    - (i) have been or will be created before the reform commencement; or
    - (ii) will be created after the reform commencement in relation to solar water heaters or small generation units that were installed before the reform commencement.
- (2) The regulations may provide for some or all of the certificates, when they are transferred under the contract, to become, and to be taken to have been, large-scale generation certificates.
- (3) Without limiting subitem (2), the regulations may do any of the following:
- (a) require information or documents to be given to the Regulator in relation to the contract or the certificates;
  - (b) provide that information or documents required to be given to the Regulator must be verified by statutory declaration;
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**Table A**

- (c) provide for the Regulator to make consequential changes to the register of small-scale technology certificates and the register of large-scale generation certificates.

## **8 The register of renewable energy certificates**

- (1) The register of renewable energy certificates under the old REE Act continues, on and after the reform commencement, as the register of large-scale generation certificates under the amended REE Act.
- (2) The Regulator may make any changes to that register that the Regulator considers appropriate because of any of the following:
  - (a) the change of name of the register;
  - (b) the fact that the certificates included in the register are, under the amended REE Act, known as large-scale generation certificates;
  - (c) the fact that, because of the reform transitional provisions, the register will also include certificates created in relation to some solar water heaters and small generation units.

## **9 No effect on time of creation or on number of certificates that can be created**

Unless a contrary intention appears, nothing in the reform transitional provisions:

- (a) increases the number of certificates that a person may create; or
- (b) changes the time at which a certificate was created before the reform commencement; or
- (c) affects the question whether a certificate created before the reform commencement is valid.

## **10 Application of section 40C**

Section 40C of the amended REE Act applies in relation to energy acquisition statements lodged, after the reform commencement, for the year that commenced on 1 January 2010 and later years.

## **11 Application of amendment made by item 113 of Schedule 1**

The amendment made by item 113 of Schedule 1 to this Act applies to the year of generation that started on 1 January 2008 and later years of generation.

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**Table A**

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**12 Saving provision relating to amendment made by item 117 of Schedule 1**

Despite the amendment made by item 117 of Schedule 1 to this Act, regulations in force for the purpose of subsection 22(1) of the *Renewable Energy (Electricity) Act 2000* immediately before the commencement of that item continue in force, after that commencement, until the first regulations made under that subsection after that commencement take effect.

**13 Application of amendment made by item 134 of Schedule 1**

Neither of the following can be made against a person in relation to conduct, or a refusal or failure, that occurred before the commencement of item 134 of Schedule 1 to this Act:

- (a) a civil penalty order under section 154B of the *Renewable Energy (Electricity) Act 2000* as in force after the commencement of that item;
- (b) an injunction under section 154S of that Act as so in force.

**14 Regulations may deal with transitional etc. matters**

- (1) The regulations may include provisions dealing with matters of a transitional, saving or application nature relating to any of the amendments and repeals made by this Act.
- (2) Regulations made for the purpose of subitem (1) may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the Regulator.

**15 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted under this Schedule to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

**16 Compensation for acquisition of property**

- (1) If the amendments made by this Act, or the provisions of this Schedule or the regulations, would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.

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**Table A**

- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:  
*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.  
*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

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*Acts Interpretation Amendment Act 2011* (No. 46, 2011)

**Schedule 3**

**10 Saving—appointments**

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

**11 Transitional regulations**

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

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**Table A**

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*Financial Framework Legislation Amendment Act (No. 1) 2011*  
(No. 89, 2011)

**Schedule 5**

**2 Application**

Despite the amendment of paragraph 132(1)(c) of the *Renewable Energy (Electricity) Act 2000* by item 1 of this Schedule, that paragraph continues to apply, in relation to a divulgence or communication before the commencement of that item, as if that amendment had not been made.

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*Clean Energy (Consequential Amendments) Act 2011* (No. 132, 2011)

**Schedule 1**

**215 Transitional—acts of the Renewable Energy Regulator to be attributed to the Clean Energy Regulator**

- (1) This item applies to anything done by, or in relation to, the Renewable Energy Regulator under the *Renewable Energy (Electricity) Act 2000*, or under regulations under that Act, before the commencement of this item.
- (2) The *Renewable Energy (Electricity) Act 2000* and those regulations have effect, after that commencement, as if the thing had been done by, or in relation to, the Clean Energy Regulator.

**220 Transitional—secrecy of information obtained under the *Renewable Energy (Electricity) Act 2000***

Despite the repeal of the following provisions of the *Renewable Energy (Electricity) Act 2000* by this Part:

- (a) the definition of *Office of the Renewable Energy Regulator* in subsection 5(1);
- (b) the definition of *protected document* in subsection 5(1);
- (c) the definition of *protected information* in subsection 5(1);
- (d) the definition of *Regulator* in subsection 5(1);
- (e) subsection 126(1);
- (f) sections 127 to 133;

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216      *Renewable Energy (Electricity) Act 2000*

**Table A**

those provisions continue to apply, in relation to:

- (g) a protected document obtained or made by a person before the commencement of this item; or
- (h) protected information disclosed to, or obtained by, a person before the commencement of this item;

as if:

- (i) each reference in sections 129, 130, 131 and 132 of that Act to the Regulator were a reference to the Clean Energy Regulator; and
- (j) the reference in section 129 to a person to whom Part 12 of that Act applies were a reference to an official of the Regulator; and
- (k) those repeals had not happened.

## **221 Transitional—documents signed by the Renewable Energy Regulator**

- (1) Despite the repeal of section 158 of the *Renewable Energy (Electricity) Act 2000* by this Part, that section continues to apply, in relation to a person who held the office of the Renewable Energy Regulator at any time before the commencement of this item, as if that repeal had not happened.
- (2) Despite the amendments of section 159 of the *Renewable Energy (Electricity) Act 2000* made by this Part, that section continues to apply, in relation to documents or certificates signed by the Renewable Energy Regulator before the commencement of this item, as if those amendments had not been made.

## **Schedule 3**

### **6 Application—registration under the *Renewable Energy (Electricity) Act 2000***

The amendment of Division 2 of Part 2 of the *Renewable Energy (Electricity) Act 2000* made by this Schedule applies in relation to applications for registration made after the commencement of this item.